

THE CIVIL COURT PRACTICE & PROCEDURE.

PART I.

This Part contains the broad hints on Practice and Procedure
under the Civil Procedure Code Appointment
of Pleaders &c., with Copious

Rulings and Notes

Arranged under different heads

IN

15 CHAPTERS

- | | | |
|----|----|---|
| Ch | 1 | Appointment of Pleader |
| " | 2 | Nature of Civil Suits |
| " | 3 | Summary of Proceedings in Civil Cases |
| " | 4 | Pleadings and Affidavits |
| " | 5 | Issues |
| " | 6 | Filing of documents |
| " | 7 | Procedure at hearing of suits |
| " | 8 | Proceedings after decree and execution |
| " | 9 | Commissions |
| " | 10 | Arbitration |
| " | 11 | Injunction |
| " | 12 | Compromise and withdrawal |
| " | 13 | Pauper Suits |
| " | 14 | Suit against Government and Public
bodies etc |
| " | 15 | Suit against minors and persons of un
sound mind |

N B—In the Appendix to this Part, 30 Plaints 30 Written
Statements several Issues with copious hints for
drawing up each have been given

THE Civil Court Practice and Procedure.

PART I.

CHAPTER I.

Pleader—Appointment, Authority, Fees, Etc

Appointment of Pleader

The appointment of a pleader under the Civil Procedure Code to make or to do any appearance, application or act for any person should be in writing and should be signed by such person or by his agent or by some other person duly authorised by power-of-attorney to act in this behalf

Every such appointment when accepted by a pleader has to be filed in Court, and ordinarily remains in force until determined with the leave of the Court, by writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client

Execution of Vakalatnama in cases of illiterate persons

When a Vakalatnama is given by a party who cannot sign his name, such party must put his or her mark, and the name of the party should be written by some one who must sign his name

attempted to make the Chapter on Conveyancing more exhaustive by giving several new models of important deeds

The whole of the Usurious Loans Act with leading cases and comments and a careful selection of rulings under almost every section of the Indian Limitation Act form two more note worthy additions to this edition

A word or two may be necessary for the Parts containing the Indian Stamp and the Court Fees Acts So far as these two very important Acts are concerned, there have been drastic amendments in recent years by the different Provincial legislatures Instead of giving the separate Amending Acts I have shown the changes in important articles at their bottom This method it is hoped, will help facility of reference

In short, I have made every endeavour to make this edition as much more useful to the profession as possible and it will only be legitimate to expect that the same warm welcome would be extended to it as to its predecessors

My thanks are due to Mr Sasi Pada Banerji B L, Pleader Judge's Court, Alipore, for very kindly preparing the Index and the Table of Contents as also for going through the proof sheets

It need hardly be said that any useful suggestion for improvement of the book or any error pointed out will be thankfully received by my son, Mr Khagendra Nath Ganguli M A B L, Pleader, Judge's Court, Alipore

2nd January, 1928

AUTHOR

PREFACE TO THE THIRD EDITION

The present edition is, as will be apparent from its increased bulk not a mere reprint of its predecessor but one thoroughly revised, recast and enlarged. Among various additions that have been made, the principal and noteworthy ones are the incorporation of the important portions of the Bengal Court Fees Act and the Bengal Stamp Act of 1922 and some new plaints, written statements,—twenty five in all on diverse subjects. The other special features of the current edition, besides the above are the incorporation of two new parts—one on “the Laws of everyday reference” and the other on “the Practical Hints for cross examination of witnesses in Civil Cases.” The former Part is sub divided into two Chapters—the first of which is devoted to laws relating to *Benami*, Fraud, Mistake, documents by *Pardanashin* ladies and illiterate persons, Alienation by Hindu widows, *Thakbast* map and the like—while in the second have been incorporated a large number of leading cases bearing on various subjects such as a practising beginner should have at his finger tips; and these have been alphabetically arranged for ready reference. It need hardly be mentioned that in the matter of selection of the above rulings I have looked to their special utility and importance as my sole guide. The other part is an embodiment of some practical hints, for cross-examining witnesses, which are calculated to indicate to the junior practitioner the lines on which he is to proceed for learning the art. The subject of cross examination is one that would call for volumes to be devoted for an exhaustive delineation; and I have tried to do as much justice to the subject as the space at my disposal would permit. I shall deem my labour amply rewarded if the hints embodied in this part serve as a side light to the neophytes.

The drawing up of plaints in complicated cases is a task that not only baffles the forensic skill of a novice but presents problems even to the veterans. It often happens

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that young practitioners, what with inexperience and what with inadvertence, fail to ensure that amount of care and caution which is necessary for drawing up complicated plaints and they often lose sight of the niceties of law having bearing on the subjects. As a safeguard against pitfalls of this nature, legal aspects of difficult plaints have been discussed while dealing with such plaints, (*Vide* hints at page 128 to plaint No 37 for a suit for enforcing registration of a document, a note at page 67 for drawing up plaint No 22 in an account suit against the legal representatives of a deceased agent, hints and references at pages 45, and 46 while dealing with plaint No 15 in a suit for damages against Railway a Company for goods sent but not delivered, etc.)

As occasion may arise when a client may like to have his document drawn up in the manner it is done in a solicitor's office I have given in this edition a model of such a deed to serve as a guide to the beginners for drafting similar documents (*Vide* pages 242—247)

The glossary also needs a word or two in its favour. Besides explanations and meanings of technical Court terms, it contains in this edition judicial interpretations of several expressions and this, it is hoped will considerably enhance the utility of this part. For ready reference chronological tables containing Bengali and corresponding English dates of 15 years have been given in Appendix II. The book (the English and the Bengali Parts with index and table of contents) comprises about 1000 pages but even though price of paper and printing costs have gone up so high, the price has been fixed at Rs 4 As 12 only to suit the convenience of Junior practitioners, and for this I can not but thank my esteemed Publishers.

In fact, I have spared no pains to make the book as useful to the profession as it is possible within the compass at my disposal and it is believed that the present edition will find more favour with the members of the Bar than its predecessors.

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DEDICATED
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AND
VICE-CHANCELLOR OF THE UNIVERSITY
OF CALCUTTA

As an humble token of profound respect and esteem

FOR

His vast erudition and untiring efforts to further
the Cause of Legal Education in Bengal.

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PREFACE TO THE FOURTH EDITION.

In bringing out this edition I have bestowed more care and labour than what is ordinarily needed for a mere revision work. I have not only revised the book thoroughly but have incorporated with it many new and important matters covering about 250 additional pages.

To maintain the up-to-date character of the book—a feature which may be very well looked upon as the soul of every legal treatise—I have embodied in this edition nearly every amending Act of importance having bearing on the Civil procedural law, namely, the Civil Procedure Code Second Amendment Act of 1926 regarding appointment of pleaders, Act XXVII of 1926 and Act X of 1927 touching the law of attestation and the mode of proving attested documents in uncontested cases, Act I of 1927 which has not inconsiderably altered the law of acknowledgment of debts for the purpose of saving limitation, the Registration Amendment Act of 1927 (Act II of 1927) necessitated by the recent Privy Council decision which made the registration of an agreement to sell an immovable property compulsory, and the like. The effect of Act XXXIX of 1925 on the law relating to Probate, Letters of Administration and Succession Certificate has not also been lost sight of.

Among portions that have been re-written, the Chapters on the Land Acquisition Act and the Lunacy Act may be instanced.

The appendices devoted to models of plaints, written statements, petitions, deeds etc. merit more than a mere passing mention. In these I have not only put in a number of new plaints and petitions but have prefaced every plaint and petition with practical hints and copious case-laws; and it is expected that a careful study of these notes and c will enable junior practitioners to make light of the d that drafting ordinarily presents on their way. I hav

THE Civil Court Practice and Procedure.

PART I.

CHAPTER I.

Pleader—Appointment, Authority, Fees, Etc Appointment of Pleader

The appointment of a pleader under the Civil Procedure Code to make or to do any appearance, application or act for any person should be in writing and should be signed by such person or by his agent or by some other person duly authorised by power of attorney to act in this behalf

Every such appointment when accepted by a pleader has to be filed in Court and ordinarily remains in force until determined with the leave of the Court by writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client

Execution of Vakalatnama in cases of illiterate persons

When a Vakalatnama is given by a party who cannot sign his name, such party must put his or her mark, and the name of the party should be written by some one who must sign his name as

the writer and give the date of signing Any person if verbally authorised may sign for another, I L R 24 All F B 319 at page 335 Read also 33 Cal 861 at page 865

Receipt of Vakalatnama

No pleader shall receive a Vakalatnama except from the party directly, or from some person who is the recognised agent of such party or some servant, relative or friend authorised in that behalf

How Vakalatnama to be accepted

A pleader accepting a Vakalatnama has to note on it the name of the person from whom it has been received, with an endorsement to the effect that he is satisfied that the person from whom he received it, is either the party himself or a certificated mukhtear or one who has been authorised by the party to deliver it to him, as the case may be He should also note the date of his receipt of the Vakalatnama When there are more parties than one and they appear by separate Vakalatnamas the Vakalatnama of one party may be received from any other similarly authorised but if they appear by one and the same Vakalatnama it may be received from any one of them without special authority from the others

When a Vakalatnama is filed by a vakil or pleader, he shall endorse on the back of it the date of acceptance, the name of the person from whom it is received and if such person is neither the client himself nor a vakil, pleader or mukhtear, the pleader shall state the precise nature of the authority with date, of the person

A Vakalatnama which has been filed in Court may be subsequently accepted by a vakil or pleader whose name appeared in the Vakalatnama at the time when it was filed in the case of such subsequent acceptance an endorsement shall be made as in the case of the first acceptance. Different High Courts have framed rules regarding the Procedure for acceptance of Vakalatnamas—so that fraud may not be practised either on a pleader or on a court by a third person. Madras High Court rules require Vakalatnamas to be executed in presence of Govt. officials specially authorised in that behalf.

The recent amendment of the C. P. Code in the year 1926 regarding appointment of pleaders and their authorities are reproduced below.

The Code of Civil Procedure (Second Amendment) Act 1926, which received the assent of the Governor General on the 25th March 1926 substitutes rule 4 of order III of Schedule I to the Code of Civil Procedure, 1908. The rule now substituted reads as follows —

Appointment of pleader

4 (1) No pleader shall act for any person in any Court unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment.

(2) Every such appointment shall be filed in court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be,

and filed in court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client

(3) For the purposes of sub rule (2) an application for review of judgment, an application under section 144 or section 152 of this code, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies of document or return of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the court in connection with the suit shall be deemed to be proceedings in the suit

(4) The High Court may by general order, direct that where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order

5 No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in court a memorandum of appearance signed by himself and stating —

- (a) the names of the parties to the suit,
- (b) the name of the party for whom he appears, and,
- (c) the name of the person by whom he is authorised to appear.

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

Responsibility of Pleaders in accepting Vakalatnama

The Courts accept Vakalatnamas on the responsibility of pleaders. A pleader accepting Vakalatnama purporting to be executed by his client in person is bound to satisfy himself that it was so executed. When it purports to be executed by a third party, on behalf of his client, he is bound to ascertain that such person has been duly empowered by the client to appoint a pleader and has himself executed the Vakalatnama. The pleaders should keep in mind that acceptance of Vakalatnama from an unauthorised person is professional misconduct, 43 I C 819, 2 P L J 36

Extent of authority of Vakils and Pleaders in Suits

Vakils and pleaders in suits cannot ordinarily receive without a special power, sums realised in execution of decrees. The powers conferred on a vakil or pleader cease on the enforcement of the decree—that is, on payment of the money (if money be decreed) unto Court. The taking of the money out of Court is a subsequent and separate transaction and a vakil or a pleader may not be permitted to receive the same except where his Vakalatnama, by a special clause to the effect, distinctly confers on him the authority to do so. The Vakalatnama must confer special power for such kind of work to be done—a general power is not sufficient, 29 All 429. For authority given on behalf of a minor and how long it lasts—Please Read 42 I C 421 (Rules framed by the different High Courts have been given in the Appendix)

Fees of Pleaders*

In the absence of any contract between a pleader and his client, fees allowed by the Court as costs between party and party may be charged—vide *Jidunath v Rasad Ali*, 19 W R 105, but a pleader cannot recover his fees by a suit unless there be written contract executed by his client 20 C L J 424 This protection is given to litigant to protect them from frivolous claims of unscrupulous legal practitioners 12 All 169 Read also 16 Mad 278 In the absence of an agreement, according to the Calcutta High Court—a pleader can recover reasonable fees for the work done 27 C W N 769 The Madras High Court refused to enforce a promissory note executed by a client in favour of his pleader for fees due as the handnote had not been filed in Court Such a hand note was held to be invalid 14 Mad 63, see Sec 28 of the Legal Practitioners Act and *Sarat Chandra v Chandra Kanta* I L R 25 Cal 805 A pleader can charge any fees by mutual agreement with his client, see *Paresh Ram v Hira Mon* I L R 18 Bom 413 and *Ram Kanta v Sib Nanda* 2 C L R 166 In a case in which more than one pleader are appointed—the fee is divided amongst all, *Sarat v Chand* 7 C W N. 300 [For scales of pleader's fees see Part IV]

Refund of Fees

When work for which fee was paid is not done pleader should refund his fees—vide *Kristo Rou v Matta Krishna*, I L R 4 Mad 244

*An Advocate cannot demand fees or remuneration for work done by him 16 I C 780 (Bom F B)

Changing Side

A pleader changing side in another case and disclosing information obtained in a previous suit is liable to be dealt with for professional misconduct—vide *Dinadar v. Blouani Sutar* 1 L R 26 Bom 423 F B. Acceptance of Vakalatnama by a pleader from both sides amounts to professional misconduct—3 P L J 390.

A B—A pleader may be dealt with under the Legal Practitioners Act for professional misconduct. See the Chapter on the Legal Practitioners Act in Part IV. A pleader may be dealt with for misconduct other than professional. See the case of *Syed Wajid Hussain* 6 C W N 556 F B.

Pleader's Clerks

For rules framed by the Calcutta High Court regarding pleaders and mukhtears recognised clerks see Appendix. A pleader is responsible for the deeds of his clerk—16 C W N 1081 and 16 C L J 634.

Renewal of Certificate

Every District Court pleader has to renew his certificate at the end of every year by making an application for the purpose and by filing a stamp worth Rs 25. Mofussil pleaders who do not practise in District Court may be required to file certificate of character from the Courts where they practise at the time of applying for renewal of their certificates—the certificates required being purely formal ones, see 13 C W N 415 & 12 C W N 919. Courts seldom refuse such certificates. Vakils are not required to renew their certificates. A pleader practising in a District Court can be admitted as

Fees of Pleaders*

In the absence of any contract between a pleader and his client fees allowed by the Court as costs between party and party may be charged—vide *Judunath v Rasad Ali*, 19 W. R 105 but a pleader cannot recover his fees by a suit unless there be written contract executed by his client 20 C L J 424 This protection is given to litigant to protect them from frivolous claims of unscrupulous legal practitioners 12 All 169 Read also 16 Mad 278 In the absence of an agreement, according to the Calcutta High Court—a pleader can recover reasonable fees for the work done 27 C W N 769 The Madras High Court refused to enforce a promissory note executed by a client in favour of his pleader for fees due as the handnote had not been filed in Court Such a hand note was held to be invalid 14 Mad 63, see Sec 28 of the Legal Practitioners Act and *Sarat Chandra v Chandra Kanta* I L R 25 Cal 805 A pleader can charge any fees by mutual agreement with his client, see *Paresh Ram v Hira Mon* I L R 18 Bom 413 and *Ram Kanta v Sib Nanda* 2 C L R 166 In a case in which more than one pleader are appointed—the fee is divided amongst all, *Sarat v Chandu* 7 C W N 300 [For scales of pleaders fees see Part IV]

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A pleader changing side in another case and disclosing information obtained in a previous suit is liable to be dealt with for professional misconduct—vide *Dimodhar v. Bhovanisankar*, 1 L R 26 Bom 423 F B. Acceptance of Vakalatnama by a pleader from both sides amounts to professional misconduct—3 P L J 390.

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a Vakil after 4 years' practice In Bengal he has to get a certificate from the District Judge and pass the oral examination prescribed by the High Court He will have to deposit the prescribed fees for enrolment

[For Vakalatnama (English Form) See Appendix and for Bengali Form of Vakalatnama See Bengali Appendix]

CHAPTER II

Civil Suits

The Civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred and a party who seeks to oust the jurisdiction of court must establish a positive bar 39 Mad 21

Munsiffs and Sub Judges have jurisdiction to try suits up to the values of their pecuniary jurisdictions fixed by the Local Govts These limits vary in different Provinces Some Munsiffs and Sub Judges are authorised to try suits (up to limits fixed by Government) under the Small Cause Court Procedure which are ordinarily triable by a Judge of a Small Cause Court (For suits which cannot be tried by a Court of Small Causes see the Provincial Small Cause Courts Act given in the Appendix) References to the following cases will give some idea of suits triable by a civil Court

Regarding Religious matters

- (1) For right of worship of an idol

Anand Rau v Sankar, 1 L R 7 Bom 323

(2) For damages for exclusion from a temple and ex-communication—

Linkala v Sabri, I L R 15 W R 531

(3) For collection of offerings at a shrine

Migu v Ram Doyal I L R 13 Mad 293

Chun v Broje 13 C L R. 49

Suits regarding Municipal Laws

(1) Against a Municipality to set aside assessment on the ground that plaintiff does not occupy holding—

Duarila Nath v Azaya Sundari, I L R 21 Cal 319

(2) On the ground that the holding is outside Municipal limits

Kassisar v Chairman, Babua Municipality, I L R 29 Cal 849

(3) That the assessment is *ultra vires*—*Nabadip Ch v Purnimunda*, 3 C W N 73

A B—So long as the action of the Municipality is within their jurisdiction and is in conformity with provisions of law no suit lies—

Chairman, Howrah Municipality v Ramessar Mahi, 3 C W N 508 I L R 26 Cal 811

Suits relating to caste Property

For those cases refer to 5 Bom 83 2 Mad 62, 17 M L J 493

Suits re Property of Native Princes

If property be situate within the jurisdiction of British Court it can try the question 12 M I A 523

- (2) To compel registration of a document not required by law to be registered, *Topa Bibi v. Ashranulla*, I. L. R. 16 Cal 509.
- (3) Suit for registration of a document on behalf of a minor—27 I. C. 86, for other suits under the Registration law—refer to 19 M. L. T. 397, 35 All 72, 11 N. L. R. 4, 17 Bom. L. R. 413 P. C.

N. B. Sections 7 and 14 of the Limitation Act have no application to suits under this heading, *Abdul v. Latifunnissa* 7 C. W. N. 550, see also I. L. R. 18 Mad 99

Suits for surplus sale-proceeds

An unregistered tenant can sue to get the surplus sale-proceeds though not a party to the decree *Matanqini v. Sitanath*, 7 C. W. N. 552

Suits for setting aside documents

- (1) For recovery of possession of property after setting aside an admitted document. *Chandra Nath v. Ram Nidhi*, 6 C. W. N. 863
- (2) For cancellation of document not properly executed, *Bankoo Behari v. Krsto Govindo*, I. L. R. 30 Cal. 433.
- (3) For possession of property after setting aside a lease granted by a Hindu widow. *Bejoy Gopal v. Nilratan*, 7 C. W. N. 864.

N. B. For other suits re : documents and their effect—read 46 M. L. J. 182, 36 Mad 360, 50 P. L. R. 1922 Etc

Suit for rectification and Cancellation of documents.

- (1) A suit lies for declaration that a document is inoperative due to mistake of facts, 29 C. L. J. 526.

- (ii) Reversioner by a suit can get a deed executed by a widow on insufficient ground, declared as not binding against him 11 C W N 956

Suits for Contribution

- (1) By a co owner for money paid for benefit of other co owners *Durga Prasad v Raghunath*, I L R 26 Cal 254
- (2) By a recorded tenant satisfying a decree against other unrecorded tenants *Gounda Chandra v Basanta Kumar*, 3 C W N 384
- (3) By a manager of Hindu family, personally borrowing money, for use of the joint family, against other members, *Aghore Nath v Girish Chandra*, I L R 20 Cal 18
- (4) Suit for contribution amongst co tenants, 60 I C 414 For other suits regarding contribution—read—17 L W 254, 43 All 77 6 M L T 375 Etc

N B—No suit for contribution lies between joint wrong doers *Hari Saran v Jotindra Mohan* 5 C W N 393

Suits on title derived by adverse possession for more than 12 years

- (1) Such a suit lies, *Mustapha v Santha* I L R 23 Mad 179
- 2) If possession be for less than 12 years a suit can be brought under section 9 of the Specific Relief Act *Purmeswar v Brijo Lal*, I L R 17 Cal 256, see also *Shama Charan v Abdul Kabeer*, 3 C W N 158

Note—Mere occupation and enjoyment by one co sharer does not *per se* constitute adverse possession as against the other

co sharers Adverse possession to the knowledge of the other co-sharers must be clearly proved *Baroda Sundari v Annoda Sundari* 3 C W N 774

Suit between Co-sharers

- (1) Where one co sharer deals with property and other co-sharers object, the remedy lies in a partition suit *Madan Mohan v Rajab Ali*, I L R 28 Cal 223
- (2) For suit against a co sharer for excavating a tank in a joint property see *Joy Chandra v Bipro Charan*, I L R 14 Cal 236 [See the Chapter on "Injunction"]
- (3) For erecting a building see *Fazilatunnissa v Izoz Hossain*, I L R 30 Cal 901
- (4) When exclusive possession by one co-sharer constitutes ouster of other co sharers the latter can bring a suit for joint possession, 33 Cal 1201, 18 C W N 328, 29 C L J 504
- (5) A co sharer can sue for damages for ouster, 29 C L J 504, 5 C L J 267
- (6) Co sharers collecting rent separately may also jointly sue for the whole rent, 12 C W. N. 249
- (7) Partition suit amongst co-sharers 20 A. L J. 90 37 All 155 Etc.

N B—References to the plaints given in App to Part I will also give an idea of various other suits ordinarily tried by a Civil Court See the Chapter on 'Court Fees' given in Appendix for various kinds of civil suits and court fees payable in plaints of such suits

CHAPTER III.

Summary of proceedings in a civil suit from the beginning up to the decree

In this Chapter I shall give an idea of a civil suit within a narrow compass. References have been given in all important matters to the forms and necessary particulars noted afterwards. These should be referred to as occasions will arise.

Institution of Suits

Every suit shall be instituted by the presentation of a plaint. The plaint shall contain—

- (1) Name of the Court ,
- (2) Names and descriptions of the plaintiff and defendant and where the plaintiff or defendant is a minor he should be represented by a competent person and the plaint shall contain a statement to that effect ,
- (3) The facts constituting the cause of action ,
- (4) The facts shewing that the Court has jurisdiction ,
- (5) When set-off is allowed or a portion of claim is relinquished—a statement to that effect ,
- (6) Statement of the value of the subject matter for purposes of court fees and jurisdiction ,
- (7) In money suits the exact amount of the claim ,
- (8) When the subject matter is immovable property—its description ,

- (9) If the plaintiff sues in a representative capacity (*e g* as an executor)—statement to that effect,
- (10) Where the claim is time barred—a statement claiming exemption from limitation,
- (11) A statement shewing how the defendant is liable,
- (12) Relief claimed

N B—(1) For drawing up plaints in rent suits under the Bengal Tenancy Act—the Bengal practitioners are referred to the Chapter on The Bengal Tenancy Act and the Model Plaints given in Bengal Part. It may be noted that the plaints in rent suits shall contain in addition to the particulars given above a statement of the situation designation extent and boundaries of land the held by the tenant or where the plaintiff is unable to give the extent or boundaries in lieu thereof a description sufficient for identification of the lands. If record of rights has been prepared and finally published the plot numbers of the lands and the rent payable as recorded should be noted.

(2) For drawing up plaints in suits by or against minors trustees executors administrators Government hints have been given in appropriate places.

The plaints shall be signed and verified (see signature and verification). If filed by pleader a vakalatnama signed by the party and accepted by the pleader shall be annexed to the plaint. Where the suit is on a document it should be filed with the plaint and a separate list shewing the documents relied on should also be filed.

Note For other important hints for drawing up plaints see notes given before plaints of various suits in the Appendix to Part I.

Court Fees

The plaint shall bear proper court fees. If a plaint is insufficiently stamped, a time will be

allowed by the Court for filing deficit court-fees and the same should be filed within the time fixed, otherwise the plaint will be rejected

Registration of plaint and Service of summons on Defendant.

If the plaint has been properly drawn up, and the required court-fees have been paid the plaint will be registered and numbered and a time will be allowed for filing a copy of plaint and written summons to be served on the defendant and for filing *Talabana*. The practice of serving summons in different provinces are different under the rules framed by the different High Courts. Some of these rules have been given in the Appendix. If this is complied with, summons will be issued and a peon will take the summons for service to the house of the plaintiff. The plaintiff may have to identify the defendant or send a man for the purpose, or the peon may serve the summons on the defendant by delivering a copy of the summons and a copy of the plaint and return the original summons to court with an affidavit shewing how the service was effected. The person identifying the defendant is required to swear an affidavit on plain paper corroborating the affidavit made by the peon.

Mode of Service of Summons.

Courts generally insist on a personal service being effected on the defendant. Summons may be served on recognised agents of the defendant, if any, and the same is considered as personal service.

Form of Summons.

In money, rent and mortgage suits summonses are issued for final disposal of the cases. I

title suits summonses are issued for settlement of issues

Ex parte trial

If on the date fixed defendant does not appear and if the Court is satisfied from the affidavits filed that summons has been properly served the Court takes evidence adduced by the plaintiff and passes an *ex parte decree* against the defendant. In Bengal in suits for rent and in Small cause Courts suits *ex parte* decrees are not passed before 14 days and 7 days respectively have expired from the dates of the service of summonses. *Ex-parte decree* may be set aside on defendant's application if he can prove that he did not get summons. [For form of such application see Appendix to Part II]

Defendant's appearance and written statement

The defendant may admit plaintiff's claim and in that case the Court will pass a decree on such admission. If the defendant does not admit plaintiff's claim he will file a written statement of his defence. (See forms of written statements given in Appendix.) In Bengal in a suit for rent permission of the Court has to be taken for filing defence. If the defendant admits a portion of the claim (in any money suit or mortgage suit) defendant may deposit the admitted amount in Court. In rent suits where the *jama* is admitted and defendant pleads part payment or takes any other objection the Court may not take cognizance of the plea unless he deposits the admitted amount in Court.

ISSUES (For Issues framed upon the pleadings see the Chapter on "Issues" in Appendix to Part I)

In rent suits issues are not ordinarily framed at the outset but are recorded in the judgment. In special cases however, issues may be framed before trial. In complicated mortgage suits and in all title and money suits issues are framed by the Court upon the pleadings after hearing the pleaders and examining the parties whenever necessary.

Filing of documents and citing of witnesses

After issues are framed the Court fixes a time for filing documents and also a date for hearing of the case. Parties must file their documents within the time fixed and take steps for production of their witnesses.

Dismissal of Suit for Default, where neither party appears

If on any date either before or after appearance of the defendant, the parties fail to appear, the Court dismisses the suit for default. In such a case plaintiff may bring a fresh suit on the same cause of action provided the claim is not barred. The plaintiff may also apply for restoration of the case if there be sufficient ground for the same.

Where Plaintiff fails to appear but Defendant is present

In such a case if the defendant does not admit any portion of the claim the suit will be dismissed. This dismissal bars a fresh suit. If the defendant admits any portion of the claim, the Court will pass a decree against the defendant for the admitted amount.

title suits summonses are issued for settlement of issues

Ex parte trial

If on the date fixed defendant does not appear and if the Court is satisfied from the affidavits filed that summons has been properly served the Court takes evidence adduced by the plaintiff and passes an *ex parte decree* against the defendant. In Bengal in suits for rent and in Small cause Courts suits *ex parte* decrees are not passed before 14 days and 7 days respectively have expired from the dates of the service of summonses. *Ex parte decree* may be set aside on defendant's application if he can prove that he did not get summons [For form of such application see Appendix to Part II]

Defendant's appearance and written statement

The defendant may admit plaintiff's claim and in that case the Court will pass a decree on such admission. If the defendant does not admit plaintiff's claim he will file a written statement of his defence (See forms of written statements given in Appendix). In Bengal in a suit for rent permission of the Court has to be taken for filing defence. If the defendant admits a portion of the claim (in any money suit or mortgage suit) defendant may deposit the admitted amount in Court. In rent suits where the *jama* is admitted and defendant pleads part payment or takes any other objection the Court may not take cognizance of the plea unless he deposits the admitted amount in Court.

ISSUES (For Issues framed upon the pleadings see the Chapter or "Issues" in Appendix to Part I)

In rent suits issues are not ordinarily framed at the outset but are recorded in the judgment. In special cases however, issues may be framed before trial. In complicated mortgage suits and in all title and money suits issues are framed by the Court upon the pleadings after hearing the pleaders and examining the parties whenever necessary.

Filing of documents and citing of witnesses

After issues are framed the Court fixes a time for filing documents and also a date for hearing of the case. Parties must file their documents within the time fixed and take steps for production of their witnesses.

Dismissal of Suit for Default, where neither party appears

If on any date either before or after appearance of the defendant, the parties fail to appear, the Court dismisses the suit for default. In such a case plaintiff may bring a fresh suit on the same cause of action provided the claim is not barred. The plaintiff may also apply for restoration of the case if there be sufficient ground for the same.

Where Plaintiff fails to appear but Defendant is present

In such a case if the defendant does not admit any portion of the claim the suit will be dismissed. This dismissal bars a fresh suit. If the defendant admits any portion of the claim the Court will pass a decree against the defendant for the amount.

Inspection of Documents, Interrogatories and Admission

After issues are framed and documents are filed a party after giving due notice may inspect the documents filed by the opposite party. A party may deliver interrogatories and the same may be answered by the other side by an affidavit (For Form of interrogatories see C P C, Order XI, Rule 4 and for Form No 2 in Appendix C of the Code of Civil Procedure as also the Chapter on "Affidavits" given in Part II.) Notice may also be given to the other side for admission of any fact or document. See Order XII. Rules 1 to 5 of the C. P. Code

Adjournments

The case may be adjourned from time to time either on applications of parties or for want of time of the Court (Order XVII, Rules 1 and 2 of the C P. Code)

Arbitration.

If all the parties to the suit require that the case be tried by an arbitrator or arbitrators nominated by them, they may put in an application to that effect and the Court will send the necessary papers to the arbitrator or arbitrators for decision of the case. As soon as the arbitrators file their award the parties are informed of the same and a decree is passed in terms of the award after 10 days from the date of the filing of the award. The parties may file objections to the award on the grounds stated in the new Schedule Rule 15 of the Civil Procedure Code and the Court in such cases hears the parties and takes evidence if necessary, and either allows or rejects the

objection (For details see the Chapter X, on "Arbitration")

Receiver

In some cases on application of any of the parties to the suit the Court may appoint a Receiver for management of the property in suit during litigation on such terms as it thinks fit. In suits for partition and for accounts when the property is in the hands of one of the co-sharers, applications for appointment of receiver are generally made.

Temporary and Permanent Injunctions.

When in any suit it is proved by affidavit or otherwise that any property in the suit is in danger of being wasted, damaged, or alienated by any party to the suit or wrongfully sold in execution of a decree or where the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors, the Court may grant temporary injunction for restraining such acts and for preservation of the property. A party aggrieved by such an order may get it discharged by shewing sufficient grounds for the same. (For details see Chapter XI on "Injunction ")

Permanent Injunction is granted by order to that effect in the judgment and this is embodied in the decree (For cases where permanent injunction may be granted—see rulings given hereafter in Chapter XI on "Injunction ")

Commissions.

(a) Commission may be issued for of pardanashin ladies, sick and invalid per.

for examination of persons exempted from personal appearance in Court. A pleader is appointed Commissioner for the purpose.

(b) Commissions are also issued for measurement of properties and for preparing plan of the disputed land with reference to the old *Chutās* and maps.

(c) After preliminary decrees in partition and account suits, commissions are issued for effecting partition and for adjustment of accounts. (For details see the Chapter IX on "Commissions")

Arrest, Attachment or Security before Judgment

Where at any stage of a suit other than a suit of the nature referred to in section 16 clauses (a) and (d) of the C P Code, the Court is satisfied by affidavit or otherwise that the defendant with intent to delay the plaintiff or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him is trying to abscond, the Court may arrest him before judgment, and where a defendant is about to dispose of the whole or any part of the property or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court with intent to obstruct or delay the execution of any decree that may be passed against him and the Court is satisfied about it from plaintiff's affidavit or otherwise, it may call upon the defendant to furnish security and failing that the Court may attach defendant's properties before judgment.

Compromise.

It may be that either at the trial or before the trial, the parties to the suit come to terms and file

a petition of compromise (see form) The Court in such a case records a decree in terms of the compromise In cases concerning minors and persons of unsound mind, permission of the Court sanctioning the proposed compromise has to be taken If the Court thinks that the compromise is for the benefit of the minor or the lunatic it grants the sanction prayed for and after that a decree is passed in terms of the compromise If there are several defendants and some of them compromise the case decree in terms of the compromise is passed against the defendants joining in the compromise and the suit may be decreed or dismissed on the merits against the contesting defendants or decreed *ex parte* against absent defendants (For ruling under this head and details see the Chapter XII on Compromise in Part I)

Trial, Evidence and Judgment

Where the case is taken up for trial on the merit the pleader of the part beginning is called upon to open the case and the party having the right to begin first adduces evidence, then the other side brings in his evidence and after cases of both parties are closed the Court hears arguments of pleaders on both sides The party who begins the case is heard last Afterwards the Court proceeds to deliver judgment At times the judgment is reserved and the Court fixes a day for delivering its judgment

Decree

A few days after the judgment is delivered a decree is drawn up in conformity with the terms of the judgment and pleaders of the parties are required to see that the decree has been properly

prepared and to put in their signatures in the same. Then the decree is signed by the Judge. The pleaders should be very careful in seeing that the decree is drawn up by the ministerial officer in accordance with the judgment—otherwise parties may suffer as the decree has to be subsequently amended by giving notice to the other side.

CHAPTER IV.

Pleadings—How to be drawn up

Pleadings mean plaint and written statement. Pleadings shall contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be but not the evidence by which they are to be proved, and shall be divided into paragraphs, numbered consecutively, dates, sums and numbers shall be expressed in figures. In all cases in which the party relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, particulars with dates and items if necessary, shall be stated in the pleading. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in the pleading. Wherever the contents of any document are material it shall be sufficient in any pleading to state the effect thereof as briefly as possible. Where it is material to allege malice, fraudulent intention and the like, it shall be sufficient to allege the same as a fact without setting out the circumstances from which same is to be inferred. Implied contract, if any, between the parties, should be noted in the pleadings.

The court may by order, strike out or amend pleadings whenever necessary

V D —For forms of pleadings and hints for drawing up plaints etc see Appendix to Part I

Language of Pleadings and Paper on which to be written.

In the Courts of the Munsifs and Subordinate Judges the pleadings may be written in the Court language. If any pleading is written in English the opposite party should be furnished with its true translation in the Court language. In the Courts of the District Judges the pleadings may be written either in English or in the Court language. All plaints, written statements, applications etc should be legibly written or typed on durable paper of foolscap size and on one side only, and quarter margin together with at least an inch of space at the top and bottom of each page should be allowed. The pleadings and applications are ordinarily written on cartridge paper sold by all stamp-vendors.

Signature and verification of pleadings

Every pleading shall be signed by the party and his pleader (if any). When a party pleading is, by reason of absence or for other good cause unable to sign himself, it may be signed on his behalf by any other person authorised by him. The party must sign at the right hand top corner of every page of plaint, written statement and those petitions as are required by law to be signed by the party. In cases requiring verification, the pleadings and petitions shall be verified at the bottom of the last page, the person verifying shall specify by reference to the numbered

paragraphs what he verifies of his own knowledge and what he verifies from information received and believed to be true. The verification shall state the place where it is signed and shall bear the date. In rent suits plaints may be verified by plaintiff's agent and this is usually done in cases of big landlords who are personally unable to verify the contents of plaints. Persons able to write must sign their own names both at the corners and also at the end of the verification. In case of illiterate person somebody should sign the name of the person and also sign his own name as a writer and the party shall put his mark. Form of signature in case of an illiterate person is given below —

(b) Ramhari Mandal ×
by the pen of
Narayan Chandra
Mukherjee

Some general hints for drawing up plaints, written statements and affidavits

[Models of various kinds^o of plaints and written statements have been given in the Appendix to Part I and hints for drawing up such plaints and law bearing on the subjects have been noted before each Model.]

Mortgage suits

All persons having an interest either in the Mortgage security or in the right of redemption shall be joined as parties to any suit relating to the mortgage. A puisne mortgagee may sue for foreclosure or for sale without making a prior mortgagee a party to the suit but a prior mortgagee need not be joined

in a suit to redeem a subsequent mortgage (Order XXXIV R 1 C P C)

Representation of minor defendants

If in a suit the natural guardian of a minor defendant refuses to appear and give his consent to his being appointed guardian, plaintiff's pleader should apply for appointment of a guardian for the minor defendant, 17 C W. N 549, 20 C L J. 469

N. B—A decree against an unrepresented minor does not bind him. 15 Ind. Cases 73

Suit against Railways for damages

It has to be ascertained first of all that a notice of the suit was duly served upon the Manager or the Collector of the District (in case of State Railways), vide 23 C L J 547, 20 C W N 606

N. B—See the Hints given before the plaint of such a suit given in the Appendix to Part I

Suit against co-sharer for damages

Such a suit will not lie unless the defendant co-sharer has completely ousted the plaintiff co sharer Before drawing up plaint in such a suit read 23 C W N. 900.

Damage suit for trees etc taken from land

Such suits against persons (not tenants) is maintainable only when plaintiff is in possession of the land, 23 Cal 884 at page 894 & Bom 572 is to the point, but see *contra* 9 Cal 283

Suits on bonds or contracts

Where a bond or a document on which the suit is based is executed in the name of several

all such persons must be jointly made plaintiffs in the case See sec 43 of the Contract Act, and I L R 22 All 307

When a suit is for recovery of money due to the estate of a deceased person—certificate

A *Succession Certificate* or *Letters of Administration* should be filed with *the plaint*. If that be not possible, then the same shall be filed before decree (Vide I L R 13 Cal 47)

In mortgage suits, *Succession Certificate* or any other certificate is not necessary (vide 5 C W N 607)

This rule does not apply when the mortgagee demands money decree for balance due after sale of the mortgaged property 12 C W N 145, 35 Cal 767

No certificate is required for collection of rent of agricultural land due to the estate of a deceased person (Vide 3 C W N 294)

But a certificate will be necessary for recovery of rent of homestead land—41 I C 84

Suit for Registration of documents

It must be ascertained that the document was presented for registration in time and that the Sub-Registrar refused to register the document and that the Registrar on appeal refused registration of the said document. If so a suit will lie for getting the document registered within 30 days of the last order of the Registrar in appeal (see 24 Cal 735 and secs 74 and 75 of the Registration Act)

N B—All these facts should be mentioned in the plaint. See Hints given before plaint of such a suit in Appendix to Part I

Different causes of Action—Misjoinder.

(5) Different causes of action should not be joined in the same suit. Such a suit is liable to be dismissed (Vide I. L. R. 24 Cal. 540)

All persons jointly and severally liable under a contract may be made defendants at plaintiff's option (See Order I Rule 6 C P Code)

Persons who have no interest in the subject matter shall not be made parties otherwise the plaintiff will be unnecessarily made liable for costs

Misjoinder of claims

No cause of action unless with the leave of the Court be joined with a suit for the recovery of immovable property or to obtain a declaration of title to immovable property except—

(a) Claims in respect of the property claimed ,

(b) Damages for breach of any contract under which the property or any part thereof is held ,

(c) Claims by a mortgagee to enforce any of his remedies under the mortgage. (Order I Rule 1 C P C)

Where claims for movable property or money are made in a suit for recovery of immovable property an application shall be filed with the plaint for taking permission of the Court for joining the claims in the same suit.

N B —Scandalous matters should not be mentioned in the pleadings unless they are material for deciding the case 14 C W N 153

Notice

In ejectment suits and suits against the Government and Municipality previous notice must be.

served on the defendant before suit, as required by law

Descriptions of Parties in plaints and written statements in particular cases

- (1) The Secretary of State for India in Council
- (2) Messrs Turner Cook and Co Limited having their registered office at Pollock Street, Calcutta
- (3) Mr. A Robertson, a Public officer of Messrs Jardine Morrison and Company having their registered office at Murshidabad
- (4) Ram Kumar Benerjee, son of ——— resident of ——— Thana ——— District ——— on behalf of himself and all other creditors of the estate of Babu ——— of ———
- (5) E G Thomson, Esq of 92 ——— Road, Calcutta and all other holders of debentures issued by the Kardah Silk Factory, Limited
- (6) A Richardson Esq ——— the Official Receiver to the estate of ——— of ———
- (7) Jadunath Ghosh, minor son of ——— resident of ——— Thana ——— by profession ——— a zeminder, by his mother Sreemati Sarala Bala Devi his next friend [Or by Purna Chandra Dutt, manager of the Court of Wards]
- (8) Rajani Kanta Guha son of ——— resident of ——— Thana ——— of unsound mind by his mother Sreemati ———, his next friend
- (9) Messrs ——— Company carrying on business in partnership at ———

- (10) Rajani Kanta Ghosh son of———resident of———by profession a pleader by his constituted attorney Gonesh Chandra Pal son of———resident of———Thana
- (11) Rameshar Mukherjee son of———resident of———Sebat of Idol *Gopinath Jau Thakur* situate at——
- (12) R. C. Dass, Esq son of———resident of———, executor to the estate of———late of———
- (13) Akhoy Kumar Bose son of———resident of———heir of deceased———of———
- (For Bengali Forms see Bengali Appendix)

Title of Suits (English Form)

In the Court of the Subordinate Judge,

Midnapur

Plaintiff.

Ram Charan Ghose, son of late Sudhakanta Ghose, resident of village———Thana———District———by profession a Zemindar and money lender

Defendant.

Rash Behari Banerjee son of———resident of———Thana———District———by profession a trader and cultivator

Suit for recovery of possession after establishment of title———valued at Rs 2001

he above-named plaintiff states as following :—

After this, state the contents of the plaint.

Verification of plaint at the bottom (English Form)

I——the plaintiff in the above case do hereby declare that the contents of the paras——are true to my knowledge and that the contents of the paras——are true to the best of my information, knowledge and belief. I sign this verification at my house at Chandpur at 11 A. M on the 12th day of April 1913

Signature

N B—Plaint if not properly verified will be struck off the file 2 C L J 11

Note—For plaints of various kinds in English see Appendix to Part I

Written Statements *

The written statement shall contain the name of the Court, names of the parties number and year, of the suit The W S shall be verified like the plaint

Form of written statement.

In the Court of the Subordinate Judge,
Khulna.

Title suit No 549 of 1913

Plaintiff.

Defendant

Ram Ch Ghose,

Purna Ch. Chatterjee
and others

Written statement of defendant No 1.

The defendant No. 1 in the above case states as follows —

*If set off is claimed in a written statement court fee should be paid in the written statement on the amount for which set off is claimed 17 C I J 35 10 C W. N 199 *contra*, 8 C W N 178.

(1) That the suit is barred by limitation

(2) _____

(3) _____

Verification.

For forms of Written Statements in English—
see Bengal Appendix to Part I

Petitions

Every petition shall contain the name of the Court, names of the parties, number and year of the suit and shall be drafted as follows —

In the Court of the Subordinate Judge,

24 Perganas

Suit No 105 of 1902

Plaintiff.

Defendant.

The humble petition of _____ plaintiff in the
above case

Most respectfully sheweth —

(1) That _____

(2) _____

(3) _____

Your petitioner prays that the Court
may be pleased to _____ (Prayer)

And your petitioner as in duty bound shall
ever pray,

Alipore

Date _____

}
}

Signature.

Note—For forms of English petitions see Appendix to Part II., and for Bengali petitions see Bengali Part

Affidavits

The affidavit shall contain the name of the Court names of the parties to the suit number and year of the case and if there be no case the affidavit shall be entitled 'In the matter of the petition of———of———' Every affidavit shall be divided into paragraphs For hints for drawing up various kinds of affidavits and their models—See Chapter on Affidavits in Part II(B)

CHAPTER V.

Issues When issues arise ?

Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other

Subject of a distinct issue

Material propositions—are those propositions of law or fact which a plaintiff must allege in order to shew a right to sue or a defendant must allege in order to constitute his defence Each material proposition affirmed by one party and denied by the other shall form the *subject of a distinct issue* [See Order XIV]

Kinds of issues.

Issues are of two kinds—(1) Issues of fact, (2) Issues of law

How issues are framed

At the first hearing of the suit the Court, after reading the plaint and the written statement and

after such examination of parties as may appear necessary ascertains upon what material propositions of fact or of law the parties are at variance and thereupon proceeds to frame and record the issues on which the right decision of the case appears to depend. No issues arise when the defendant makes no defence. There should be framed no issue on any point about which there is no dispute between the parties. 51 Ind Cases 981. While framing issues the Court may refer to documents and to answers to interrogatories if any.

Trial of issues

The Court may at the outset try issues of law when it is of opinion that the case or a part thereof may be disposed of on the decision of such issues, otherwise all the issues will be simultaneously tried at the hearing of the suit.

To enable a junior pleader to have an idea as to how issues are ordinarily framed the issues which arise on some plaints and written statements have been given in the Appendix to Part I. By reading the plaints and written statements he will be able to understand how each issue has been framed. It is expected that by carefully reading the pleadings and the issues given, a beginner will get a clear idea on the subject and will be able to frame issues in cases of more complicated pleadings given in the Appendix to Part I.

It should also be noted that where proper issues have not been framed a party may apply under Order XIV, Rule 5 C P C to amend the issues or to frame additional issues or to strike out any issue that appears to have been wrongly framed and the

Court after hearing the other side may strike out, amend or add issues on such terms as it thinks fit

Object of framing issues

The object is to enable the parties to clearly understand what points they are required to prove, so that they may adduce necessary evidence at the time of hearing *Syad Mahamad v Fate Mahamad* I L R 22 Cal 324 P C Where no issue is framed on a point, the point is considered to have been abandoned, 17 C W N 64 The Court has right to frame issues if necessary even after arguments V. de 16 C L J 596 But issues should not be inconsistent with the pleadings—15 I 1 A. 81. A party cannot be allowed to make out a new case at the hearing of a suit which he did not set forth in the pleading in time—25 C W N 554 (P C)

If issues can be raised between conflicting defendants

Issues should not be raised and tried between co defendants See *Bhagwan v Dakhna* 8 W R 356

Case of vague pleadings

In such a case the Court may call for further statements and then frame issues *Kader v Ganinda*, I L R 17 Cal 840 at page 848

If different case is disclosed in evidence

The Court will refuse to take notice of it till a proper issue is framed—20 Bom 569

Issues in rent suits

Even if the defendant sets up a title of a third party, no issues need be raised on that point *Lodhi Mullah v. Kabi Das*, I. L R 8 Cal 238

CIVIL COURT PRACTICE.

Issues in Easement suits.

For this refer to I L R 6 Cal 394 P C.

Issues from oral pleadings.

The Court may frame issues on such pleadings though not mentioned in the written statement *Secretary of State v Dipchand*, I. L R 24 Cal 306

Issue on Limitation if not raised in W. S

No issue need be framed by Court on Limitation if it is not raised by defendant in his W. S 6 C. W N 641

Can a defendant raise a new issue after plaintiff's case is closed?

If the effect of raising such an issue is to reopen the whole case, a defendant cannot be allowed to raise a new issue at that stage *Haji Sahoo v Ajmalbibi*, 7 C W N 665 P. C

Issue of adverse possession—if required to be specifically raised.

Where the plaintiff has failed to prove his alleged title but it is proved that he has acquired title by adverse possession and no issue of adverse possession was raised—still the plaintiff can succeed *Sundari v. Madhoo*, I L R 14 Cal. 592.

Omission to frame an issue

This is an irregularity—but if it affects the disposal of the suit on the merits—the Appellate Court may remand the case for trial after framing necessary issue—13 M I A 573 at page 583 See also 11 M. I. A 25

Whether appeal lies against an order refusing to settle an issue

No appeal lies against such an order, *Ebrahim v. Fackrunsa*, 1 L R 4 Cal. 531, but this may be taken as a ground of appeal from the judgment and decree passed by the first Court.

Parties may agree that certain issues of fact or law be decided by the Court

(a) If an agreement to the above effect is duly executed and if the parties have substantial interest in the decision of such question and if the same are fit to be tried and decided, the Court may try those issues under Order XIV, Rule 7 of the C. P. Code and pass judgment accordingly.

(b) If the parties state that they would abide by such a decision no appeal lies against the judgment *Blur Das v. Nobin*, 6 C W N 121=1 L R 29 Cal. 306

Issues in miscellaneous cases

Issues may be raised in miscellaneous cases arising under sec 47 of the C P Code and also in other miscellaneous proceedings

Inherent power of Court.

The Court has inherent power to frame issues for ascertaining the truth upon points not raised in the pleadings of the parties, *Nistari v Mukhanlal*, 17 W. R 432 Read 16 C. L J. 596 where issue was framed after arguments.

CHAPTER VI

Filing of Documents and citing of witnesses

Documents on which suits are based should be filed with the plaints and a list of documents to be relied on should also be filed along with the plaint. After issues are framed, a time is allowed by the Court for filing documents and a date is fixed for hearing. Every pleader should advise his client to file documents within the time allowed by the Court otherwise a party may be highly prejudiced in case some important document be not subsequently accepted by the Court. (See the case of *Amarchand v Ram* 18 W R 515) Documents necessary for cross examination of any witness may be filed at any time (Vide Order 3 Rules 1 and 2 of the C P Code) & the Chapter on practical cross examination of witnesses (Part VI)

In Suits on Khata Accounts—Copy or extract of the *Khata* with the *Khata* should be filed with the plaint. The *Khata* will be returned by the head ministerial officer of the Court and the copy or the extract after examination will be kept with the record (Vide *Gopal v Krishna* I L R 22 Bom 671, but the original *Khata* must be produced at the time of hearing) Copy prepared by the ministerial officer does not require any stamp—*Kastur v Fakira* I L R 26 Bom 522 (See also hints given before plaint of such a suit in Appendix to Part I)

Rent suits

Same papers may be necessary in many suits. The papers may be filed in one case and after the trial of that case is over, the papers may be taken

back by furnishing copies or extracts certified by a duly authorised officer and then filed in another case, see Chapter on "the Bengal Tenancy Act" and see section 148 (f) of that Act

Citing of witnesses

After issues are framed parties should file documents and take steps for production of witnesses. Witnesses are cited by making an application to the Court (for form see Part II) stating their names, residences, occupations and by filing process fees, and depositing diet money and travelling expenses and by supplying the Court with duly filled up summonses to be served on the witnesses (Expenses allowed to witnesses have been given in Chapter IV of Part A

Pay and travelling expenses of Government servants should ordinarily be deposited along with the application for summons. In case of Government servant one copy of summons is served on the witness and another copy of the summons has to be sent to his official superior. For this no extra fee is charged.

Warrant—If any witness does not appear after service of summons, a party may get a warrant of arrest for bringing the witness to Court by making an application for the purpose supported by an affidavit shewing that the witness was personally served with the summons and that the witness is a material witness for proving the case [For form of affidavit see Part II(B)] A party may attach properties of such a witness and then ask the

Court for punishing the witness for disobeying its summons (31 C L J 363)

Note—Ordinarily witnesses brought under arrest do not support the party who gets them arrested

CHAPTER VII.

Procedure at the hearing of a suit

After the Defendant files his defence and issues are framed, the parties take steps for the production of their oral and documentary evidence. If any of the parties dies, then his legal representative applies within 3 months for substitution in place of the deceased otherwise the suit abates. If a party is declared insolvent during the pendency of the suit the Official Assignee or the Receiver of the insolvent's estate is substituted in place of the insolvent.

Evidence how adduced

On the day fixed if the parties are ready and the Court has time to take up the case, the regular trial of the suit begins. The plaintiff has ordinarily the right to begin unless the defendant in his defence admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks. In such a case the defendant has a right to begin.

The party having the right to begin states his case and produces his evidence in support of the issues which he is required to prove. When there are different sets of defendants, each set of defen-

dants has a right to address the Court before any evidence is taken (Vide I L R 29 Cal 32) In a bond suit where the defendant admits execution of the bond but denies receipt of consideration the *onus* is on the defendant and he has the right to begin (see the Privy Council case *Sih Lal v Indrojit* reported in 4 C W N 82) After the party having the right to begin closes his case the other party state his case and adduces evidence Then the party who adduced evidence last addresses the Court, and last of all the Court hears arguments of the party who began the case In cases where there are several issues and the burden of proving some of the issues is on the 2nd party the party beginning has the option of producing evidence on those issues or to reserve it by way of answer to the evidence produced by the other party In the latter case the party beginning may produce evidence on those issues after the 2nd party has produced all his evidence and the 2nd party may then reply specially on the evidence so produced by the party beginning, but the party beginning will then be entitled to reply generally on the whole case

Evidence how recorded

The evidence of the witnesses is taken orally in open Court In appealable cases the Judge records the evidence in the form of a narrative and after examination of each witness the evidence recorded is read over and explained to the witness and if necessary, corrections are made In non appealable cases only a memorandum of evidence is taken by Judge When any question put to a witness is objected to by a party and the Court allows the ques

tion—the question, the answer and the objection are noted. In a few cases the Court also takes notes regarding the demeanour of witnesses while under examination.

Documentary evidence—30 years old document and secondary evidence

Documents produced at the trial are proved by witnesses who were present at the time of execution or by witnesses who know the hand-writing of persons who wrote and executed the documents. Documents over 30 years* old are accepted in evidence without any proof provided they are produced from proper custody. Where a document is not in possession of a party, he calls for the original from the person in whose possession the document is, and if such person fails to produce the original, secondary evidence of the contents of the document is adduced by producing a certified copy of the document. Contents of the copy are read over to a witness who was present at the time of the execution of the original and if the witness says that the original was executed in his presence the copy is marked as an *Exhibit* in the case (Vide 13 W. R. 429)

Ordinarily documents called for from a witness are tendered in evidence and proved—but the Court may accept a document produced by a witness—even though it had not been called for from him—88 1 C 498, (1925) Cal 1149.

Unregistered documents

Mortgage bonds executed after 1st January 1905 must be registered, 12 I C 25 Permanent tenure

* Thirty years must have been completed before the document was filed in Court 12 A L J 507 54 I C 368

can be mortgaged only by registered document; 3 C. W. N. 499 Unregistered *kobala* for less than Rs. 100 is no evidence of title and is not admissible in evidence—19 Cal. 623 F. B. (see observation of Garth, C. J.), 8 Cal. 597 at page 612 These documents must not be put in evidence and objection should be taken if any party would try to put in such documents for marking as exhibits in any case

Documents required by law to be attested

A document (e. g., a Mortgage Bond, a Deed of Gift, or a Will) required by law to be attested by witnesses is proved by examining at least one attesting witness to such a document A mortgage bond can be proved by evidence of a witness not an attesting witness to the bond but in that case the mortgage lien created by such a bond cannot be enforced and the bond will be treated for all intents and purposes as a simple money bond. (Vide 1 C. W. N. 81; 6 C. W. N. 395, 26 Cal. 222, 33 I. C. 111)

If the scribe writes the name of the executant of the bond in the mortgage-deed and if the mortgagor does not put his mark—then the scribe cannot prove the bond as an attesting witness 46 Cal. 522; 26 C. W. N. 256 The Patna High Court however has taken a different view—20 C. W. N. 677. Under certain circumstances—the scribe can be an attesting witness 7 C. W. N. 160 [Read an article on this subject in 26 C. W. N. 42 (notes) see Part V].

In an *ex parte* case a mortgage bond may be proved by a witness—though he may not be an attesting witness to the deed—Vide Act XXXI of 1926.

Where Mortgage bond is admitted but attestation is denied by Defendant

In such a case in spite of Defendant's admission of the bond Plaintiff has to prove that the bond was duly attested—27 C W N 293

Books of Account

Books of accounts kept in due course of business are used not only for the purpose refreshing memory but also as corroborative evidence of the statement made by a witness (*Bloj Hong v Ramunathan* 6 C W N 401) but without independent corroborative evidence—a defendant can not be made liable upon the entries in an account book (See I L R 11 Cal 407) except where the writer of such document is dead vide 16 C L J 24

Document of which registration is compulsory

A document which is required by law to be registered is not admissible unless it is registered but an unregistered document, the registration of which is compulsory may be admitted in evidence for a collateral purpose i.e. to prove admission of liability on the part of the executant, to prevent a claim from being barred or for proving hand writing etc—*Mangram Gurnulh*, I L R 26 Cal 334 6 I C 346 Registered documents must be proved in Court before they can be used in evidence and marked as an *Exhibit* Registration is not in itself proof of due execution of a document—*Sah Matul v Karlash* I L R 17 Cal 903

Documents of boundary lands

These are not admissible for proving possession,—25 C W N 1022

Public documents

In case of public documents, e g judgment, decree etc, certified copies are admissible in evidence under sections 74 and 77 of the Evidence Act. A plaint has been held to be a public document *Muhammed Sahibuddin v Wedgelberry* 10 B L R Ap 30. Maps and charts prepared under the authority of Government (17 C W N 193) Quinquennial Register (15 C L J 281) Loan Register of Bengal Bank (31 Cal 284) are Public documents. Maps & charts showing allotments on partition may be accepted in evidence—even though not registered. 47 I C 159. Census Register is not a Public Document—6 Bom L R 535.

Documents executed by Pardanashin ladies

Onus of proving such documents is heavy on the party who seeks to put in such documents in evidence, 25 C W N 942 (Mukherjee J's Judgment). It must be proved that the lady executing the document had independent advice,—26 C W. N. Read 11 M I A 28. See Part V(A).

Tampered documents

If the Court thinks that a document has been tampered with in material parts it can reject such a document *Mahesh Chandra v Kamini Kumari*, 1 L R 12 Cal. 313 but alteration made in good faith after execution of the deed to carry on the original intention of the parties does not vitiate the deed—25 C L J 155.

Rejected document.

Such documents are returned to the party at the time of trial and a pleader is bound to take back

documents filed by him and which have not been admitted in evidence

After evidence of both parties is closed and arguments are heard the Court delivers judgment as noted before

Expert Evidence

Expert witnesses have sometimes to be called for proving hand writing but such evidence has to be taken with considerable caution as such a witness has a tendency to support a party who calls him
64 I C 234 2 A L J 444, 2 Lahore L J 110

CHAPTER VIII

Proceeding after decree and execution

Mortgage decrees—By this decree a time is allowed to the judgment-debtor for paying off the decretal amount. If such amount or any part thereof remains unpaid the decree holder may file an application supported by an affidavit, (for form of application and affidavit see Part II (3)) for making the decree absolute stating that the sum mentioned in the application is due*. Thereupon a notice may be issued on the judgment debtor to shew cause why the decree shall not be made absolute. The judgment-debtor may appear and state that he has satisfied the decree. If on enquiry by the Court it is found that any amount is due under the decree the Court will pass an order making the decree absolute for the amount due. The judgment debtor, if he is dissatisfied with the order, may prefer an appeal.

* If heirs of mortgagee decree holder seek for personal decree—they must produce succession certificate 12 C W N 145

If no appeal is preferred or if such appeal is dismissed, the decree holder may apply for sale of the mortgaged property. After the property is sold the decree holder will get his dues out of the sale proceeds and the balance, if any, will be paid to the judgment-debtor. If, on the other hand, the sale proceeds be not sufficient to satisfy the decree, the decree-holder if he is entitled to proceed against other properties of the judgment debtor (i.e. if his personal remedy against the judgment-debtor was not barred at the time of the institution of the suit) may apply for a personal decree against the judgment-debtor and if the Court is satisfied that the decree holder is entitled to a personal decree, the Court will grant such a decree and the decree holder may then realise his dues by sale of other properties, if any, of the judgment debtor. [For other particulars regarding mortgage decrees see Order XXXIV C. P. Code]

Partition suit—After preliminary decree is passed (and if any party does not appeal from the said decree or after disposal of such appeal, if any), the Court issues a commission for partitioning the properties in suit in terms of the decree, between the parties to the suit. A Commissioner will then measure the properties, prepare plans and make valuations and will submit his report, partitioning the properties as directed by the Court. The aggrieved party may file objections to the Commissioner's report and after disposal of such objections, final decree is drawn up in terms of the original or modified report as the case may be. An aggrieved party may appeal from the final decree.

Partition suit—if costs of Commissioner be not paid after preliminary decree—its result

Even if the Commissioner's cost be not paid the Court has no power to dismiss the suit. The case, however, can be disposed of reserving liberty to plaintiff to have the case restored on the list on payment of all costs of court fee stamps paid in the case which may be forfeited to Government as a penalty for plaintiff's negligence and plaintiff may be debarred from executing the preliminary decree as to costs against defendant unless the forfeited court fees be paid. It has been distinctly laid down by their Lordships of the Privy Council that the Court has no jurisdiction to dismiss the suit under the circumstances. 29 C W N 391 P C. Many Courts fail to follow this procedure and so the pleaders should draw the attention of the Courts to the said Privy Council ruling.

Account suit—After preliminary decree (if an appeal be preferred then after the disposal of such appeal) a commission is issued for adjustment of accounts. The Commissioner submits his report after taking accounts and subsequently a final decree is drawn up after hearing objections to the report, if any. An appeal lies from the final decree.

[For Procedure before an Account Commissioner see Chapter IX on Commissions.]

Title suit—Decree-holder may get possession of the property to which his title has been declared or of which he has been ordered to recover possession. Decree holder will have to apply for execution of the decree (See form in Part II) and an officer of the

Court will be ordered to deliver possession of the property to the decree-holder in terms of the decree. Decree-holder may realise his costs, by attachment and sale of moveable or immoveable property of the judgment debtor

Money decree—The decree-holder will have to apply for execution of the decree in the prescribed form. He will have to state how he proposes to get his decree executed : *i.e.* either by attachment or sale of judgment debtor's moveable or immovable property or by arrest and imprisonment of the judgment-debtor

Execution of decree—Court by which decree may be executed.

The Court which passed the decree or the Court to which a decree is sent for execution may execute a decree

Transfer of decree.

A decree may be sent to another Court under section 39 of the C. P. Code—if the judgment-debtor voluntarily resides or carries on business or personally works for gain within the local limits or jurisdiction of such Court or if the judgment-debtor has no property, within the jurisdiction of the Court which passed the decree, sufficient to satisfy the decree but has property, within the jurisdiction of another Court. The Court when transferring a decree to another Court states the amount due under the decree in the usual certificate. The Court receiving the decree shall certify to the Court which passed the decree the fact of its execution and its result [Vide Order XXI]

Mode of transfer

If both the Courts are in the same district the decree may be directly sent to the other Court. In case the two Courts are in different districts, the Court which passed the decree shall send it under Rule 5, Order XXI of the C P Code through the District Court of the district in which the decree is to be executed. The Court shall send (1) a copy of the decree (2) a certificate stating the amount due under the decree, (3) a certificate that decree has not been executed or if executed a copy of the order of execution.

An application for execution*.

Under Rule 11, Order XXI of the C P Code, every application for the execution of a decree shall be in writing, signed and verified by the applicant or some other person proved to the satisfaction of the Court to be acquainted with the facts of the case and shall contain in a tabular form the following particulars namely,

- (a) the number of the suit,
- (b) the names of the parties,
- (c) the date of the decree,
- (d) whether any appeal has been preferred from the decree,
- (e) whether any, and (if any) what payment or other adjustment of the matter in controversy

*Note—An application for execution of a decree cannot ordinarily be amended. *Vide* 22 C W N 542, *Read* I L R 17 Cal 631 F B

has been made between the parties, subsequently to the decree ,

- (f) whether any, and (if any) what previous applications have been made for the execution of the decree, the date of such applications and their results ,
- (g) the amount with interest (if any) due upon the decree and other relief granted thereby, together with the particulars of any cross-decree whether passed before or after the date of the decree sought to be executed ,
- (h) the amount of the costs (if any) awarded ,
- (i) the name of the person against whom execution of the decree is sought ,
- (j) the mode in which the assistance of the court is required, whether
 - (1) by the delivery of any property specifically decreed ,
 - (2) by the attachment and sale or by the sale without attachment of any property ,
 - (3) by the arrest and detention in prison of any person ,
 - (4) by the appointment of a receiver ,
 - (5) otherwise, as the nature of the relief granted may require

If required by Court a certified copy of the decree will have to be filed

When an application is made for attachment of immoveable property belonging to the judgment-debtor it shall contain at the foot a description of the

property and extent of the judgment-debtor's interest in the same

Note [For form of petition see Part II and C P Code Schedule I Appendix F No 6]

Joint decree-holders

Any one or all the decree-holders may apply for execution. The Court passes an order under Rule 15 Order XXI of the C P Code protecting the interest of all the decree holders, if all the decree holders do not jointly apply for execution.

Application by transferee

If a transferee of a decree applies for execution notice of the application shall have to be given to the transferor and the judgment-debtor before actual execution of the decree.

Notice

Where an application for execution is made (a) more than a year after the date of the decree or (b) against the legal representatives of a party to the decree the Court under Rule 22, Order XXI of the C P Code issues a notice to the person against whom the execution is applied for, requiring him to show cause why the decree shall not be executed. If no objection is made or if the objections made are disallowed the Court shall order execution of the decree.

Cross-decrees or cross-claims in the same decree.

Execution is allowed for the amount due after allowing set off. See Rules 18, 19, Order XXI

Simultaneous execution

Execution at the same time against the person and property of the judgment debtor may be refused by Court

Stay of execution

Execution may be stayed by an order of the appellate Court or the Court executing the decree may stay execution under Rule 26 Order XXI upon sufficient cause being shewn (For form of application and affidavit see Part II)

Mode of execution

Decree for payment of money—may be executed by arrest or imprisonment of the judgment debtor *Decree for specific moveables* may be executed by actual seizure or by the mode prescribed in Rule 31 Order XXI *Decrees for specific performance, for restitution of conjugal rights or for an injunction* may be enforced in cases of wilful disobedience by detention of the J D in the civil prison or by the attachment of his property The property so attached may be subsequently sold if the disobedience continues vide Rule 32, Order XXI For mode of execution of a *decree for execution of document* or endorsement of negotiable instruments see Rule 34 Order XXI The Court may execute and register such document whenever necessary

Decree for immovable property—is executed by delivering possession of the property in terms of Rule 35, Order XXI Where such property is in possession of a tenant not a party to the decree the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place of the property,—vide rule 36 Order XXI

Arrest

The D H shall deposit subsistence allowance of the J D at the time of praying for arrest

Where the J D may be discharged

If the J D appears and satisfies the Court that he is unable from poverty or other sufficient cause to satisfy the decree the Court may under rule 40, Order XVI make an order disallowing the application for arrest or if the J D is brought under arrest the Court may direct his release (For rules for attachment of moveables see Appendix)

Note —It is not competent to a Court in execution of a decree for money to attach a debt payable to a judgment debtor outside the jurisdiction of a Court by a person not resident within the jurisdiction of the Court 22 C W N 160

Attachment is effective even though notice of attachment is not served upon the J D 40 I C 102

Attachment of debt, salary, decree

Debt, share and property not in possession of the J D are attached under rule 45, Order XXI of the C P Code by affixing a copy of the order in the Court house and sending another copy to the person in whose hands the properties are Judgment debtors share in a moveable property may be attached under Rule 57 by issuing a prohibitory order on the J D

Attachment of salary—is effected under Rule 48 by communicating the order to the disbursing officer

N B—Property belonging to a partnership firm shall not be attached or sold in execution of a decree against any individual partner but a decree against a firm may be executed by attachment of property belonging to the firm (see Rules 49 and 50)

Negotiable instrument

If not in Court or in the custody of a public officer, attachment shall be made under Rule 51 by actual seizure, if in the possession of a Court attachment shall be made by a notice to the Court.

Decree

A decree in favour of a J D may be attached under Rule 53 by issuing a notice to the Court which passed the decree, where the decree was passed by the same Court, attachment may be effected by recording an order to that effect. The J D of the decree attached shall be prohibited by an order from making any payment to the D H of the decree attached.

Note—Agriculturist's homestead cannot be attached or sold in execution of a mortgage decree, but it can be sold if the homestead appertains to his holding 11 I C 646 F B. A property sought to be attached must be in existence 25 C L J 595.

Attachment and sale of immovable property *

If the property sought to be attached be immovable property a peon will go to the spot with the writ of attachment and fix a copy of the order on the property and proclaim the order by beat of drum. The judgment-debtor is prohibited by the order of attachment from selling the property or disposing of any interest in the same. Any alienation by the judgment-debtor after attachment will be null and void. After due proof of attachment is adduced before the Court by filing required affidavits of the peon and the identifier, the Court will pass orders

* Some High Courts require a certificate from the Sub Registrar about J D's subsisting interest in the property before attachment. (See General Appendix Part X)

for sale of the attached property and will issue regular sale proclamation to be served on the property and in the Court premises. A date will be mentioned in the proclamation for sale of the property and the property will be sold on the date fixed, by the Nazir of the Court. The decree-holder with permission of the Court may bid at the sale. The purchaser will be required to pay 25 p c of the purchase money on the day of sale and the balance within 14 days. In case the decree holder purchases the property at a sum less than the amount due under the decree he is not required to deposit any money but he must pay the prescribed sale fee (See the Chapter on Process Fees in Part X)

Effect of attachment

Attachment does not create any title of D H to the property but it simply creates a lien or charge over the property for a sum due to D H 25 C L J 595

When attachment is effective

It is effective after the land is actually attached at the spot Vide 42 Mad 844

Effect of private sale after attachment

Such sale is void only as against the attaching decree holder but is good against others—33 C L J 7

Removal of attachment *

The attachment shall be deemed to be withdrawn after satisfaction of the decree (Rule 55) or shall

*Note—If a sale is set aside the attachment is revived and fresh attachment is not necessary 3 P L J 310 Attachment is also revived when the decree of the first Court set aside in first appeal is restored by the High Court 33 C L J 201 48 I C 386

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cease when the execution case is dismissed for decree holder's default (Rule 57)

V B—For claim to attached property resistance to execution and other proceedings in execution and rulings—see Part II

CHAPTER IX

Commissions

Following kinds of commissions are ordinarily issued by Civil Courts

- (1) Commission for examination of an absent witness
- (2) Commission for local investigation
- (3) Commission to examine accounts
- (4) Commission for partition of properties

Commission of the first kind is issued under Order XXVI Rule 4 and of kinds 2 to 4 under Order XXVI Rules 9 to 12

Class I—When a witness is unable to attend Court or is a *pardanashin* lady Commission under this heading is obtained by making an application to the Court supported by an affidavit (For forms of petition and affidavit see Part II) The Commissioner records the evidence of the witness in the language it is given and submits a report stating that he has executed the commission as directed by the Court The Commissioner should ordinarily attend the house of the witness for his or her examination Commission of this kind is ordinarily issued to pleaders of the Court Commission may be sent to some other pleader of another Court when the witness does not reside within the jurisdiction

of the Court which issues the Commission. A list of pleaders willing to execute Commissions is annually published by the High Courts. It must, however, be remembered that where a witness resides outside the limit fixed by Orders 16 and 19 the Court has no discretion but to issue commission for examination of such a witness. 46 Mad 574

Pardanashin ladies—Examination on Commission.

An enlightened Hindu lady though she appears in public can claim the privilege of being examined on Commission. 22 C W N 174. A woman does not cease to be *pardanashin* because she on another occasion was compelled to appear before the public. 22 C W N 197

Note—It frequently happens that advantage is taken by the pleaders before a Commissioner and cross examination of the witness is unnecessarily prolonged. The Court may in such a case on the application of the party taking the Commission pass an order limiting the time of cross examination. *Surya Prosad v Standard Life Insurance Co*. I L R 30 Cal 625. The Courts generally condemn long examination of witnesses vide 1917 Pat 246. Evidence taken on commission forms a part of the record even though not formally tendered. 36 Cal 566. 13 C W N 525. see *contra* 9 C W N 794.

Note—As to the definition of the word *pardanashin* refer to the Privy Council case reported in 33 Cal 773 P C.

Case II.—When a party considers that by relaying any recognised Map or Chitta (*e g.* Thakbust Map or Chitta) and by measuring the disputed land in suit with reference to the Map or Chitta, he may shew that the land belongs to him, he may apply for local investigation. When the disputed land is a small strip and its possession cannot be conveniently proved by oral evidence or where after decree

the land may not be properly identified at the time of execution, a party may in such cases apply for local investigation. In a case where the area of disputed land is in dispute, a Commission for measurement of the land may be prayed for. The application for local investigation should be made as early as possible after settlement of issues. In some suits it happened that the parties failed to prove their true claims as they did not apply for local investigation. If the application for local investigation is granted a proceeding will be drawn up by the Court and the same will be sent to the District Judge for nomination of a suitable Commissioner (or a Survey-passed Pleader or a registered Amin) on the party's depositing necessary costs in Court.

Note—In a case of relaying maps the pleader accompanying the Commissioner must insist on a correct starting point being fixed in the locality otherwise the Commissioner will arrive at a different and wrong conclusion. The Commissioners are ordinarily authorised by the Courts to take evidence whenever necessary and the unsuccessful party as a matter of right cannot adduce evidence before the Court which he might adduce before the Commissioner. Vide—*Girish Chunder v. Sashi Sekhar*, 4 C W N 631 (P C).

Value of Commissioner's report

Great weight is attached by the Courts to the reports of the Commissioners and in fact it is common experience that most of the cases are decided according to such reports. Vide *Ramgopal v. Gordon* 14 M I A 453.

Objection to Commissioner's Report.

Such objections, if any, should be filed soon after the report is submitted. The Court will enquire into such objections—vide *Abdul v. Campbell* 8 W.

R 172 When a party thinks that the Commissioner should be examined to explain his report and map, the Commissioner should be summoned for the purpose. If necessary the Commissioner may be cross examined touching his defects. 27 I A 117

Class III—When preliminary decree is passed by a Court directing that accounts be taken, the Court issues Commission of this class. The Commissioners in many cases fail to adopt the proper procedure and the Commissions are unnecessarily prolonged. So it is necessary for pleaders appearing before an account Commissioner to know the proper procedure to be followed—For this carefully read *Alathmed v Navab* 24 W R 70 and *Harnath v Krishna Kumar* I L R 14 Cal 147 (P C). The last case is very important. A Commissioner can decide questions of law that may be raised before him. 41 Bom 719

Class IV This Commission is issued in a case where preliminary decree is passed ordering partition to be effected in terms of the decree. This Commission can be issued by the Court to qualified persons without referring to the District Judge.

N B—For partition of joint family dwelling house read the Partition Act IV of 1893. If the dwelling house be small the Court can give the property to any of the parties even after the Commissioner had partitioned the same. *Hiramoni Dasi v Radha Charan* 5 C W N 128

Note—Suit for partial partition of properties belonging to the parties is not maintainable (see 6 C W N 614 P C and 8 C L R 367). If preliminary decree for partition is passed in such a case an appeal should be filed from the judgment and decree and an order for staying proceedings before the Commissioner should be obtained from the appellate Court. Formerly a Partition com.

mission had to be issued to more than one Commissioners 29 All
235 But this is no longer the law after amendment of the section

Assessment of fees of a Commissioner appointed to measure land and make local investigation :—
The Court which appoints the Commissioner is the proper Court to settle the fees—The District Judge's intervention in such a case was held to be improper,
23 C W N 295

Fees of Commissioners in Bengal

Pleader Commissioners get fees at the rate of Rs 4 per witness in Munsiff's Court and Rs 10 per witness in Courts of District Judges Sub Judges and Small Cause Court Judges for examination of a witness Fees at the above rates per diem are allowed to pleaders who are appointed Commissioners for examination of accounts

In cases of local investigation and partition Commissioners appointed ordinarily get fees at the following rates

	Munsiff Courts	Other Courts
Survey passed pleader	Rs 8 per diem	Rs 16 per diem
Executive Engineers	} Rs 30 per day in all Courts	
Assistant Engineers		
Sub Engineer	Rs 20 to Rs 15 per day in all Courts	
Overseers (Graduate)	Rs 5	
Apprentice	Rs 2 to Rs 4	
Amin	Rs 4	

Note—Besides fees Commissioners get travelling allowance at the prescribed rates The Courts have discretion to allow fees at higher rates where superior expert knowledge is required Judicial officers holding local investigations in cases tried by them get only travelling allowance *The scale of fees of commissioners is different in different Provinces (See Part A)*

CHAPTER X.

Arbitration—Appointment of Arbitrators.

Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced apply to the Court for an order of reference to arbitration and the arbitrators shall be appointed as may be agreed upon between the parties

Order of reference by Court.

The Court shall, by order, refer to the arbitrator the matter in difference which is required to be determined and shall fix a time for the making of the award, and during this time the Court shall not deal with the subject-matter in suit. On sufficient grounds the Court can extend the time for the making of the award.

How award to be made.

The arbitrators shall record their decision in the award and sign and file it in Court together with any deposition and documents which have been taken and proved before them. The Court shall intimate the parties that the award has been filed.

Objection to Award

Parties may file objection to the award within 10 days from the date of the filing of the award

Correction of Award.

The Court may by order, under Rule 12 of the Second Schedule of the C. P. Code, modify or correct an award —

- (1) Where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred or
- (2) Where the award is imperfect in form or contains any obvious error which can be amended without affecting such decision or
- (3) Where the award contains a clerical mistake or an error arising from an accidental slip or omission

Where the award may be remitted

The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire upon such terms as it thinks fit (*Vide* Rule 14 Schedule II of the C P Code)

(a) Where the award has left undetermined any of the matters referred to arbitration or where it determines any matter not referred to arbitration unless such matter can be separated without affecting the determination of the matters referred

(b) Where the award is so indefinite as to be incapable of execution

(c) Where an objection to the legality of the award is apparent upon the face of it

Grounds for setting aside Award

- (1) An award remitted becomes void on failure of the arbitrator to reconsider it But no award shall be set aside except on the following grounds namely —

(a) Corruption or misconduct of the arbitrator or umpire

(b) Either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire

(c) The award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court or being otherwise invalid

(2) Where an award becomes void or is set aside under clause (1) the Court shall make an order superseding the arbitration and in such case shall proceed with the suit under Rule 15 Schedule II of the C P Code

Judgment and decree

Where the Court sees no reason for remitting or setting aside an award it shall proceed to pronounce judgment according to the award and upon the judgment pronounced a decree shall follow

Appeal

An appeal shall lie under Rule 16 Sch II of the C P Code from such decree except in so far as the decree is in excess of or not in accordance with the award

Arbitration without the intervention of Court

Where any matter has been referred to arbitration without the intervention of a Court and an award has been made thereon, any person interested in the award may apply, (under Rule 20 Sch II

of the C P Code) to any Court having jurisdiction over the subject matter of the award that the award be filed in Court

Filing and registration of application as a suit

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants

N B—The application shall be stamped as a petition and does not require *ad valorem* court fees as in the case of a plaint

Notice

The Court shall direct notice to be given to the parties to arbitration other than the applicant requiring them to show cause within a time specified why the award shall not be filed

Judgment and decree

If the Court is satisfied that the contents of the petition are true and that an award has been lawfully made, the Court shall pass judgment and decree according to the terms of the award

Appeal

No appeal shall lie from such decree except in so far as it is in excess of or not in accordance with the award

Rulings

Reference—how to be made ? Reference is ordinarily made in writing and the document referring to arbitration is chargeable with stamp duty but oral reference to arbitration can as well be made 30 M L J 67 and 20 C W N 137 P C , 30 All 32 But according to Cal H Court application for reference to arbitration must be made in writing 4 C W N 92

All parties must join

All the parties must join in an application for appointing arbitrators *Tinkoury Dey v. Falir Chand*, 1 L. R. 30 Cal 218-7 C. W N 180. All persons, even those not appearing or contesting, but interested must join in the reference—21 C. W N. 387; 44 M L J 359, 1923 (Pat) 225

If all parties do not join.

The proceeding is irregular *Ghulam Jilani v. Muhammad Ahmad*, 6 C W N 226 P. C

Appellate Court—if it can refer to Arbitration

The parties may apply in appellate Court also for referring the case to arbitration. *Bhugwan Das v. Nand Lal*, 1 L R 12 Cal 173, 7 All 523

Pleader of party—if can be appointed Arbitrator.

A pleader of one of the parties to the suit should not be appointed arbitrator. *Kali Prosono v. Rajan Kant*, 1 L R 24 Cal. 141 referred to in 6 C W. N 255

Execution proceeding—Dispute in execution proceedings can be referred to arbitration. 42 I C 467

Can a pleader refer a case to Arbitration ?

No, unless specially authorised—23 C. W. N 200 notes.

Revocation of Arbitration

Ordinarily should not be allowed unless there be very good reason *Pestonjee v Mernockjee*, 10 W. R 51, P C.

If the arbitrator is indebted to one of the parties or is an ammuktear of a party and if this was

known to the other party at the time of reference such party may get the order of reference cancelled *Mahomed Wahiduddin v Hakimian* 1 L R 29 Cal 278 = 6 C W N 235

Death of a party after application for reference to arbitration—If the right to sue survives then the case may be referred to arbitration on the strength of the application of the deceased 33 All 645

Can a suit be withdrawn after reference to arbitration?—No Plaintiff may withdraw from the suit but no permission can be given to Plaintiff for instituting a fresh suit 9 All 168, 7 C W N 168

An order of reference may be cancelled if the arbitrators make unreasonable delay *Coley v Decosta* 1 L R 17 Cal 200

Presence of all the Arbitrators at all meetings—All the arbitrators must be present at all meeting especially when something important is done—*Andal Ram v Faleer Clard*, 1 L R All 523 see also *Valer Chind v Gound Chandra* 2 C L J 61 Read 14 C L J 143 and 22 C W N 301

Extension of time—The Court can extend the time for submission of award even if the time originally allowed may have expired—*Rim Monalir v Lal Belari* 1 L R 14 All 343 See 1 L R 10 All 137

Filing of award—time allowed by Court—Award must be made and signed within the time allowed but it may reach the Court after the time allowed expires—*Assulullah v Mahamed Nur*, 1 L R 27 All 459

Notice of the filing of the award—Notice should be given to the parties *Ranga Sami v Mathu Sami*, 1 L R 11 Mad 144

Misconduct of Arbitrator—Can it be waived?—Yes—14 C L J 188 Does an erroneous decision on a point of law vitiate the award?—No—31 C L J 273 19 C W N 948

Time of Objection—Objection should be filed within 10 days. *Nohn Kaly Dey v Ambica Charan*, 5 C W N 813

See Art 158 of the Limitation Act—and 18 C W N. 626—18 C L J 35

Note—In computing 10 days—time necessary for taking copies should be excluded *Ghulam Jilani v Muhammed Ahmed* 6 C W N 226 P C

Can arbitrators review their decision?—Functions of the arbitrators cease on filing the award and they cannot subsequently alter their decision or review the same *Dullo Sing v Dossid Bahadun*, 1 L R 9 Cal 575, Read 14 C L J 188 and 49 I C 522 (Pat)

Private award if not filed in Court—A private award is valid without being enforced by Court. *Moles Chandra v Balaram*, 6 W R 94

Suit on private award—A suit to enforce a private award is maintainable *Brij Mohun v Sham Singh*, 1 L R 24 All 164 But if the arbitrators acted beyond their power the Court cannot amend the award nor send the award to arbitrators for re-consideration *Mustafa v Fulpi* 1 L R 27 All 526,

Limitation for filing award—A private award can be filed within 6 months from the date of the award under the Limitation Act.

CHAPTER XI.

INJUNCTION.

Temporary Injunction when granted

1 When in any suit it is proved by an affidavit or otherwise (For form of affidavit see Part V) —

(a) That the property in dispute in a suit is in danger of being wasted damaged or alienated by any party to the suit or wrongfully sold in execution of a decree, or

(b) That the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors,

The Court may (under Order XXXIX, Rule 1) by order grant temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting damaging, alienation sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders

II In any suit for restraining the defendant from committing a breach of contract or other injury of any kind whether compensation is claimed in the suit or not, the plaintiff may at any time after commencement of the suit and either before or after judgment apply (under Rule 2, Order XXXIX, C P C) to the Court for a temporary injunction to restrain the defendant from committing the breach of contract, or injury complained of, or any breach of contract or injury of a like kind arising not of the same contract or relating to the same property or right

The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise as the Court thinks fit

Notice.—Before granting injunction the Court directs notice to be issued on the opposite party.

Disobedience of an order issuing injunction.

In case of disobedience or breach of any terms of the order of injunction the Court granting an injunction may order the property of the person guilty of such disobedience to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

How long attachment lasts.—No attachment as above shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceed the Court may award such compensation as it thinks fit and shall pay the balance, if any, to the party entitled thereto.

Injunction directed to a Corporation.—An injunction directed to a Corporation is binding not only on the Corporation itself but also on all members and officers of the Corporation whose personal action it seeks to restrain

Rulings.

When Injunction should be granted.—The Court is to consider balance of convenience and if pecuniary compensation would be adequate, *etc.* 23 C. W. N. 677, 21 C. L. J. 469.

Note Upon an application by plaintiff for a temporary injunction it is sufficient if he makes out a *prima facie* case in support of the title asserted by him. Where a plaintiff is out of possession the Court will not grant injunction against defendant in possession unless the threatened injury is irreparable. 22 C W N 699. The injunction granted falls through with the dismissal of the suit in which it is granted. I L R 42 All 561.

In order to succeed in an injunction proceeding it is not necessary that there should have been an actual damage. 37 M 527. 18 All 115. 12 All 36 F B.

An injunction is a discretionary relief and a Court will be reluctant to grant it where plaintiff is out of possession, 7 M J 7 311. 75 I C 549. A full discussion on the subject will be found in 29 C L J 584.

How Injunction is issued.

In India temporary injunction is issued in a mandatory form, 41 Mad 208.

Suit by an unsuccessful claimant—An unsuccessful claimant after rejection of claim can bring a title suit and apply for injunction to stay sale. *Brajendra Kumar v. Rup Lal*, I L R 12 Cal. 515.

Waste by a Hindu widow—A suit by a reversioner to restrain waste by a Hindu widow and for injunction is maintainable—*Manmatho Nath v. Rohun Mohun*, I L R 27 All 406.

N B In a partition decree order can be passed restraining waste by a Hindu widow. *Durganath v. Chintamani*, I I R 31 Cal 214—8 C W N 11.

Apprehended danger.—For digging well close to plaintiff's land, injunction may be granted if defendant's act causes reasonable apprehension of danger to plaintiff's property. *Bindu Bashim v. Jambh Chaudhuran*, I. L. R. 24 Cal 260.

Building—Court may grant injunction directing removal of building *Mogan Lal v Chotolal*, 1 L R 26 Bom 136

Light and air—A wall causing obstruction to light and air may be removed by an order of injunction *J. S. Indersand & Co v Hardat Roy Chumarr*, 9 C W N 543 Vide 1 M W N 251 and 8 Bom 95 Ref An injunction may be issued where the defendant attempts to dispute the right of easement acquired by the plaintiff 25 B L R 239

Marriage—Temporary injunction to restrain marriage cannot be granted—54 I C 223

Trade Mark—Injunction can be issued for infringement of trade mark—41 Bom 49

Copy Right—Injunction can be issued for infringement of Copy Right 33 All 24

Lease—Granting of lease may be restrained by injunction 17 C I J 427

Injunction against a co sharer—Where the act of the defendant amounts to an ouster of the plaintiff from his possession of the joint property and pecuniary compensation will not be adequate, an injunction may be granted *Sashi Bhuson v Ganesh Chandra* 1 I R 29 Cal 500 For other cases on injunction between co sharers read 20 A W N 55 and 4 C W N 781

Execution Proceeding—Can it be stayed by Injunction?—No 1 L R 31 Cal 480 Can Criminal Proceeding be stayed by injunction?—No—6 I C 181 Read also 31 Cal 858

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Building—Court may grant injunction directing removal of building *Morgan Ltd v Chotolal*, 1 L R 26 Bom 136

Light and air—A wall causing obstruction to light and air may be removed by an order of injunction *J. S. Fraser & Co v Harda' Roy Chumaria* 9 C W N 543 Vide 1 M W N 251 and 8 Bom 95 Ref An injunction may be issued where the defendant attempts to dispute the right of easement acquired by the plaintiff 25 B L R 239

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Injunction against a co-sharer Where the act of the defendant amounts to an ouster of the plaintiff from his possession of the joint property and pecuniary compensation will not be adequate an injunction may be granted *Sista Bhason v Gramsh Chandra* 1 L R 29 Cal 509 For other cases on injunction between co sharers read 20 A W N 55 and 4 C W N 781

Execution Proceeding—Can it be stayed by Injunction?—No 1 L R 31 Cal 480 Can Criminal Proceeding be stayed by injunction?—No—6 I C 181 Read also 31 Cal 858

Against Municipality—Injunction may be granted restraining Election—In the matter of *Corkhill*, I L R 22 Cal 717

Prevention of nuisance—If special injury is caused to plaintiff—an injunction may be granted *Galstann v Doona Lal Seal*, I L R 32 Cal 697=9 C W N 612 Injunction may be issued upon a factory preventing commission of nuisance 64 I C. 169

Trees—If branches of defendant's trees overhang plaintiff's land or where roots of defendant's trees are likely to enter plaintiff's land—perpetual injunction may be granted *Lal lunarain v Tarajiroso* I. L R 31 Cal 944 8 C W N 710

Public worship—Injunction restraining defendant from interrupting at religious ceremonies may be granted *Faiz Karim v Maulvi Balsh*, I L R 18 Cal 448 P C

Injunction for restraining sale of a property in execution of a decree—Such an injunction may be allowed in a fit case even though the executing Court may be a different one and of higher jurisdiction 23 Cal 351, 33 All 79 F B

Realisation of rent—Injunction restraining defendant from collecting rent alleged to be due to plaintiff may be granted *Nadir Iumma v Ram Chandra* W. R (1864) 362

Appeal—An appeal lies from an order refusing or granting temporary injunction, 35 All 425 23 Mad 517.

Punishment for disobeying an order of Injunction—The Court can punish for contempt in case

of disobedience—In the matter of *Chandra Kanta*
 I L R 6 Cal 445 —Even if the party did not get
 the notice but was aware of the order 42 All 98
 The order must be obeyed before it is withdrawn
 20 C W N 457 (P C)

Notice—An injunction should not be issued
 without notice to the opposite party *Baddin v*
Blunpitt Singh 1 C W N 429

How long will temporary injunction last?—
 If the suit is dismissed the order of injunction
 becomes infructuous If after dismissal of the suit
 it becomes necessary to apply for temporary injunc-
 tion the application should be made after preferring
 an appeal to the appellate court 11 Cal 146 at
 p 149 26 All 311

**Compensation for taking injunction on in-
 sufficient ground**—Court can allow compensation
 to defendant if the Plaintiff obtained injunction on
 insufficient ground (see section 95) If the Court
 does not allow compensation under sec 95 an
 aggrieved party may bring a regular suit for damages
Nanda Kumar v G. M. Sular 13 W R 305

Remedy for breach of permanent injunction—
 Remedy lies in an application for fresh execution
 and not by a suit 22 C W N 851

CHAPTER XII.

Compromise and Withdrawal of suit

COMPROMISE

Where it is proved to the satisfaction of the
 Court that a suit has been adjusted wholly or in part

by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree (under Order XXIII, Rule 3 C P Code) in accordance therewith so far as it relates to the suit

N B 1) Nothing in the above rule shall apply to any proceedings in execution of a decree or order. See order XXIII Rule 4 and the Privy Council case of *Thakur Prosad v Fakirulla* 1 L R 17 All 101

(2) The above rule does not apply to suits under the Bengal Tenancy Act. For rules of compromise of such cases see the Chapter on 'the Bengal Tenancy Act' and section 147A of the said Act

When a party subsequently refuses to accept the compromise

If the Court is satisfied that any compromise has been lawfully entered into between the parties, the Court can enforce it notwithstanding that one of the parties subsequently objects to the compromise being accepted. *Brocdarlu v Jamanath*, 1 L R 24 Cal. 908 F B—1 C. W. N 597 F B

Compromise beyond the scope of the suit.—If terms of compromise which are beyond the scope of the suit are considerations for the compromise of the subject matter of the suit—they must be incorporated in the decree, otherwise not. *Purna Chandra v Nri Madhab*, 5 C. W. N. 485. If compromise petition embodies extraneous matter beyond the subject matter of the suit—such a compromise is inadmissible in evidence without registration—27 C L J. 583.

Compromise by a tadbirkar of party.—Such compromise is binding on the party if he ratifies the acts of the agent and the compromise. *Bhut Nath v. Ram Lal* 6 C. W. N. 92

Non-Registration of compromise and its effect.

Section 17 of the Registration Act does not apply to proper Judicial Proceedings or to orders made by the Court. *Bhadeswar Nath v. Ganga Saran*, I L. R. 20 All. 171 P. C.

An unregistered compromise may be admissible in evidence—*Gupta Narain v. Bijoy Sundary*, 2 C. W. N. 663. But a compromise deed without registration is inadmissible in evidence 38 Bom. 976

If pleader had no authority to compromise—the decree becomes void. 34 Bom. 408

A consent decree is admissible in evidence, *Lala Sub Lal v. Lala Gouri Pershad* 2 C. W. N. 663

Terms of compromise lawfully entered in a decree and acted upon by the Court are binding between the parties even if those terms ordinarily embodied in any other document may not be binding without registration of such document. *Pronal Anne v. Lal lu Anne*, 3 C. W. N. 485 P. C. I. L. R. 22 Mad. 508 (Read also 58 I. C. 554, 31 C. L. J. 298=24 C. W. N. 177)

Compromise by a minor's guardian without taking permission of the Court

Such compromise does not bind the minor. *Sarat Chandra v. Kartic Chandra*, I. L. R. 9 Cal. 810. See *Abdul Ali v. Muzaffar Hossain*, 16 W. R. 22 P. C. if consent of Court was obtained by fraud the decree

liable to be set aside. 24 C. L. J. 74. Sanction of Court to the compromise must be express 17 C. W. N. 1135 but it may be presumed even if there be no formal Order—8 C. L. J. 31. Read also 8 C. L. J. 266, 274. The Court must exercise judicial discretion in granting sanction for compromising a case in which a minor is involved. 17 All. 531. The terms of compromise should be advantageous for the minor 10 B. H. C. 311.

If compromise decree embodies terms beyond the scope of the suit.

The party aggrieved may prefer an appeal. *Venkata Papa v. Thumma*, I. L. R. 18 Mad. 410. Such extraneous matter is evidence of a party's admission 3 P. L. J. 255 F. B. and may be enforced not by execution but by a separate suit (same case). Read in this connection the Privy Council case in 24 C. W. N. 177 P. C.

How a compromise decree obtained by fraud can be set aside

- | | | |
|---------------------------|---|-------------|
| (1) By review of judgment | } | 15 Bom. 594 |
| | | and |
| (2) By a regular suit | } | 34 Cal. 83. |

See also *Biraj Mohan v. Chantamoni*, 5 C. W. N. 877 and also 7 C. W. N. 419.

N. B. When a party elects the procedure by review he can not again file a regular suit—*Ram Gopal v. Prosonno Kumar*, 2 C. L. J. 309.

If the compromise was effected by mistake, 19 C. W. N. 1197, when it was tainted by fraud, 17 C. W. N. 436. When the pleader had no authority to compromise. 17 C. W. N. 156, 41 Mad. 333.

A compromise decree cannot be questioned in Execution Proceeding but a compromise decree obtained by fraud may be set aside by a regular suit or by an application for review as state above 15 Bom 594 34 Cal 83

Withdrawal of suit

When the Court is satisfied

(a) that the suit must fail by reason of some formal defect or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim—it may on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or part of a claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of a claim

When the plaintiff withdraws from a suit or abandons a part of a claim without the permission referred to above he shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim *Vide* Order XXIII Rule 1 of the C P Code One of several plaintiffs cannot withdraw without the consent of others In the fresh suit plaintiff shall be bound by the law of limitation as if the first suit had not been instituted

Withdrawal of suit in appeal—Appellant—plaintiff may withdraw his suit even in appeal 19 C L J 518 45 Bom 206 74 I C 894, 37 All 326, 40 Mad 259 Plaintiff respondent may similarly withdraw his suit in appeal 20 C W N 544 A suit

may be withdrawn even in second appeal. Vide 20 C. W. N. 544.

Withdrawal of a suit—when not allowed by Court.

A party after adducing evidence is not allowed to withdraw from the suit simply because the suit may fail on the evidence before the Court. See 11 C. L. J. page 45. Vide also 1917 Pat. 141. Failure to produce documents is no ground for granting permission to withdraw. 27 M. L. J. 480. A suit cannot be withdrawn after reference to arbitration or after award is filed. 7 C. W. N. 186, 28 C. L. J. 275. High Court can revise an order allowing withdrawal; 41 Cal. 632, 25 C. L. J. 456, if Court passes a conditional order as to payment of costs before next suit—such condition has to be fulfilled. 19 C. L. J. 529, 15 C. W. N. 998. (*See below.*)

Note.—Order of withdrawal passed in a previous suit cannot be questioned in a subsequent case 31 C. L. J. 482—this case overruled the case reported in 20 C. W. N. 1000.=23 C. L. J. 489.

Nature of permission necessary.

The Court may record express permission to withdraw from the suit with liberty to bring a fresh suit on the same cause of action or permission may be inferred by implication from the order. 2 Lah. L. J. 242.

Is order granting withdrawal appealable ?

No appeal lies from this order but the order is open to revision. 64 I. C. 556 ; 15 All. 169.

Effect of conditional order granting permission.

If permission is given to bring a fresh suit on condition of paying defendant's costs within a specified

time that order should be strictly complied with
The Court may, however extend the time on
plaintiff's application 29 Mad 370 10 C W N 8
And the Court has discretion of accepting costs
even before the hearing of the next suit begins 31
Cal 965 33 Mad 643

CHAPTER XIII.

Pauper Suits

WHO IS A PAUPER

A person is a 'pauper' when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in a suit or where no such fee is prescribed when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject matter of the suit

How a pauper suit is to be filed

Such a suit has ordinarily to be filed by presentation of an application by the pauper in person Every such application for permission to sue as a pauper shall contain the particulars required in regard to a plaint A schedule of any moveable or immoveable property belonging to the applicant with the estimated value thereof shall be annexed and the application shall be signed and verified in the manner prescribed for the signing and verification of pleadings [For form of application see Part I Appendix]

Examination of the applicant by Court

Where the application is in proper form and duly presented, the Court may, if it thinks fit, exami

may be withdrawn even in second appeal Vide 20 C W N. 544

Withdrawal of a suit—when not allowed by Court.

A party after adducing evidence is not allowed to withdraw from the suit simply because the suit may fail on the evidence before the Court. See 11 C L J page 45 Vide also 1917 Pat 141 Failure to produce documents is no ground for granting permission to withdraw 27 M L J 480 A suit cannot be withdrawn after reference to arbitration or after award is filed 7 C W N 186, 28 C L J 275 High Court can revise an order allowing withdrawal, 41 Cal 632, 25 C L J 456, if Court passes a conditional order as to payment of costs before next suit—such condition has to be fulfilled 19 C L J 529, 15 C W N 998 (*See below*)

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How a pauper suit is to be filed

Such a suit has ordinarily to be filed by presentation of an application by the pauper in person. Every such application for permission to sue as a pauper shall contain the particulars required in regard to a plaint. A schedule of any moveable or immoveable property belonging to the applicant with the estimated value thereof, shall be annexed and the application shall be signed and verified in the manner prescribed for the signing and verification of pleadings [For form of application see Part I Appendix]

Examination of the applicant by Court

Where the application is in proper form and duly presented, the Court may, if it thinks fit, ex-

the applicant regarding the merits of the claim and the property of the applicant (Vide Rule 4, Order XXXIII C P Code)

When the application is to be rejected

The Court shall reject an application for permission to sue as a pauper, under Rule 5, Order XXXIII, of the C. P Code —

- (1) When it is not framed and presented in the manner prescribed , or
- (2) Where the applicant is not a pauper, or
- (3) Where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
- (4) Where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter

Procedure at hearing

Where the Court after examining the applicant sees no reason to reject his petition, it shall fix a day on which the applicant may adduce evidence about his pauperism and notice of the date fixed shall be given to the Government Pleader and the opposite party. On the day fixed the Court shall take evidence adduced by the parties and after hearing arguments may either allow or refuse the application

Registration of application as a plaint

When the application is granted it shall be numbered and registered and shall be deemed the plaint in the suit and the suit shall proceed in all other respects as a suit instituted in the ordinary manner except that the plaintiff shall not be liable to pay any court fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit

Dispaupering at a subsequent stage

The Court may on the application of the defendant or of the Government Pleader order the plaintiff to be dispaupered at any stage Vide Rule 9 Order XXXIII C P Code —

- (1) if he is guilty of vexatious or improper conduct in the course of the suit ,
- (2) if it appears that his means are such that he ought not to continue to sue as a pauper or
- (3) if he has entered into an agreement with reference to the subject matter of the suit under which any other person has obtained an interest in such subject matter

Cost of court fees how realised

The Government may realise such costs from the defendant if the plaintiff succeeds or from the subject matter of the suit, as may be ordered in the decree Such costs shall be a first charge on the subject matter of the suit If the suit is dismissed or the plaintiff is dispaupered costs may b

from the plaintiff In a pauper suit the Court sends a copy of the decree to the Collector

Refusal of application and its effects

If the Court refuses the application for permission to sue as a pauper, the order bars a subsequent application of like nature but the applicant may institute a regular suit by paying proper court fees [Order XXXIII, Rule 15]

A B Merits of the case have to be incidentally considered before rejecting the petition 8 C W N 70 25 M L J 343

Pauper Suit—Rulings

Filing of application

If the party is exempted from appearing in Court—a pleader duly authorised can file the application *Kishori Mohun v Gones Mohun*, 15 W R 198 See 28 I C 448 Petition should be presented by all the petitioners unless exempted from appearance or by their agent. 10 Mad 193 80 P. L R 1915 4 I C 778

Note—A pauper appeal may be presented by a pleader *Maulthe v Somoffa Barata* I L R 26 Mad 369

N B—A duly authorised agent other than a pleader can file pauper appeal *Wazirunnissa v Ilahi Baksh* I L R 24 All 172 *Pauper application through a next friend—Can it be made?—yes*—The next friend need not be a pauper—23 C W N 955

Suit for dower money—A Mahomedan lady may sue her husband for her dower money *in forma pauperis* *Khajajannissa v Saifoola Khan* 24 W R 163 P C.

Note—Husband of a pauper applicant may be rich but the applicant if she is a pauper can prosecute a suit *in forma pauperis*—3 P. L. J. 178

What the Court can enquire—When an application is presented the Court should incidentally go into the evidence as to the merits of the claim and shall enquire whether the applicant is a pauper and if his allegations disclose a right to sue *Ranganayka v Venkata*, 1 L. R. 4 Mad 323, see 8 C. W. N. 70

If the Court sees that the applicant has no right to sue it shall reject the application *Debi Das v. Mahunt Ram Charan*, 2 C. W. N. 474

Can pauper application be returned for presentation into proper Court?—No 52 I. C. 688 (Allahabad Case)

Appeal

No appeal lies from an order rejecting an application for leave to appeal *in forma pauperis*.—*The Secretary of State v Fillo*, 1 L. R. 21 All 133 See also *Bulado v Gulo* 1 L. R. 9 All 129, where an appeal was allowed as the first Court had passed an order on the merits of the case while rejecting the petition **Review**—An order rejecting an application can be reviewed *Adarji v Manickji*, 1 L. R. 4 Bom 416 See 11 W. R. 22

Pauper-appeal from judgment and decree.

Any person entitled to prefer an appeal who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal and may prosecute an appeal as a pauper, *vide* Rule 1, Order XLIV, C. P. Code **Enquiry how made**—The enquiry into the pauperism of the applicant may be made either by the

Appellate Court or under the order of the Appellate Court by the Court from whose decision the appeal is preferred

CHAPTER XIV.

Suits by or against the Government or Public Officers or Public bodies or Firms, Trustees, Executors and Administrators

Descriptions in complaints, in suits by or against Government, etc.

In a suit by or against the Secretary of State for India in Council instead of inserting in the plaint the name and description and place of residence of the plaintiff or the Defendant it shall be sufficient to insert the words 'The Secretary of State for India in Council' *vide* Rule 3, Order XXVII of the C. P. Code. **Time for filing defence** If the Secretary of State in Council be defendant in any case, the Court allows a reasonable time to the defendant to answer the plaint, the time should be sufficient for necessary communication with the Government, through the proper channel and for the issue of instructions to the Government Pleader. **Suit against a Public Officer**—When the Government undertakes the defence of a suit against a Public Officer the Government pleader is authorised to conduct the defence. **Verification of pleading by a Corporation**—In suits by or against a Corporation, under Rule 1, Order XXIX of the C. P. Code, any pleading may be signed and verified on behalf of the Corporation by the Secretary or by any Director or other principal officer of the Corporation who is able to depose to the fact of the case. **Service of**

Summons—Summons on a Corporation may be served on the Secretary or any Director or other principal officer of the Corporation or by leaving it or sending it by post addressed to the Corporation at the registered office or at the place where the Corporation carries on business.

Firms—How can sue or may be sued

Partners of a firm may sue or be sued in the name of that firm *vide* Rule 1 Order XXX of the C P Code but the names and places of residence of all the persons constituting the firm should be disclosed whenever required. **Verification of pleading**—In such a case any pleading or other document required to be signed verified or certified may be signed, verified or certified by any one of the partners.

Service of Summons—Summons may be served upon one or more of the partners or at their principal place of business.

Death of a partner—On the death of a partner it shall not be necessary to join the legal representative of the deceased partner as a party to the suit but such legal representative may apply to be made a party to the suit or enforce claim against the the survivor or survivors. *Vide* Rule 4 Order XXX of the C P Code.

N B—Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm's name.

Trustee

In all suits concerning property vested in a trustee executor, or administrator, where the contention is between the person, beneficially interested in such property and a third person, the trustee, executor, or

or administrator shall represent the persons so interested All the trustees executors (who have proved testator's will) or administrators shall be made parties under Rule 2 Order XXXI C P Code but it shall not be necessary to make the beneficial owners parties in such a case

Rulings

Suit against Corporations and Firms —

(i) Dormant partners are not necessary parties in a partnership suit 20 C W N 438

(ii) When a suit is against a firm heirs of a deceased partner need not be made parties 17 C L J 648 28 C L J 268

(iii) In a suit against a firm the entire body of partners representing the firm should defend the suit 1 Q B 714

(iv) If the sole proprietor of a firm be a minor he is entitled to the privilege of limitation respecting a minor 1923 Bom 368 [The relationship between partners is governed by the Provisions of the Indian contract Act 25 Mad 149]

A minor partner cannot sue for dissolution of partnership business 23 C W N 500

(v) A co partner cannot sue another partner for money realised by the latter 11 C W N 311

(vi) For limitation regarding dissolution of partnership—(3 years)—See Limitation Act Art 106 and 25 C W N 314

(vii) If a partnership business comes to an end no partner can sue another for money received, but there may be a suit for dissolution of the business

and for accounts 17 C W N 351 All partners are necessary parties in such a suit 18 C. W. N. 404

Suit by Executor.

All the executors who have got Probate should ordinarily join as plaintiffs in a suit regarding property in their hands 12 Bom 83

Unregistered Corporation.

A Corporation which is not registered may sue as above *Singer Manufacturing Co v. Baynath*, I L R 30 Cal 103 **A Secretary of a school.**—A secretary of a school can maintain a suit for the benefit of the school *Sriepany Ray v. Hills*, 6 W R 21 (Reference)

Suit against Railways .—

(i) Railway as a carrier is not responsible for loss caused by the carelessness of the consignee 58 Ind Case 1000

(ii) A Railway under the Common Carriers Act—Act III of 1865, as amended by Act X of 1899—is liable for loss of goods in transit 23 C W. N. 998—in this case the goods were destroyed by fire in transit and the Company was held liable for the loss.

(iii) Liability of Railway Company arises according to the terms of the Risk-note. 43 Mad. 617.

(iv) Railway is not responsible if the loss be due to act of God.—21 C W. N. 1185 nor is the Railway liable when the loss is caused due to the carelessness or neglect of the consignee. 18 A. L. J. 764.

(v) In case of State Railways 6 months' notice of suit must be given to the Collector or the Manager

20 C W N 790 and 696 and 42 All 390 For service of notice in cases of other companies—Read 38 I C 502

(vi) **In a damage suit for loss in transit**—the Company has to prove absence of negligence as it is liable for the direct outcome of its negligence 33 C L J 72 For liability of a company for loss of goods on account of accident inspite of best care taken possible under the circumstances and which could be taken in a moment of peril see the Privy Council case of *Dwarkanath v The River Steam Navigation Co Ltd* reported in 27 C L J 615 which is also reported in 20 Bom L R 735 and 23 M L T 376

Suit for winding up of a Company—for this—Read the Indian Companies Act (Act VII of 1913) secs 162 and 163 and Judgment of Sanderson C J in 23 C W N 844

Can a Subordinate officer verify Plaintiff ?

- (1) Principal officer of a Company may not verify a plaintiff and the plaintiff may be verified by any other officer *The Port Canning & Co v Dharamdhur* 9 C W N 604 but the Allahabad High Court is of different opinion 16 All 420

See also *Sreenath v E I Ry Co* I L R 22 Cal 268

- (2) Verification by an officiating Inspector of Branches of the Bank of Bengal was held good—*Ram Kamal v Bank of Bengal*, 5 C W N 91

Note—A suit by an unregistered company must be instituted in the names of all the members of the company 20 All 167

Notice

Notice on a Traffic Superintendent of a Railway is not good but should be served on the Manager or the Agent *Secretary of State v Dp Chint* 1 L R 24 Cal 206 Read also 20 C W N 696

Representatives of trustees—when necessary parties

Representatives of trustees are necessary parties to a suit, regarding trust property, with third persons. *Annapurna Devi v Mom Mohan* 7 C W N (S N) LXVIII Whom a trustee represents?—Trustees represent the persons beneficially interested—*Satthuanama v Saravariupani*, 1 L R 18 Mad 266 Estate represented by Executor—An Executor can not represent the estate without taking out probate of the Will *Essa v Fatma*, 1 L R 7 Bom 266 Is beneficial owner bound by the decree?—A beneficial owner is bound by the decree obtained against an Executor or Administrator *Bai Meher Bai v Mogan Chand*, 1 L R 29 Bom 96

CHAPTER XV.

Suits by or against minors and persons of unsound mind

SUIT—HOW INSTITUTED

Every suit by a minor shall be instituted in his name by a person who shall be called the next friend of the minor Where a suit is instituted without a next friend the plaint shall be taken off the file

How a guardian is appointed of a minor defendant

An order for the appointment of a guardian of a minor defendant in a suit is obtained by making an

application supported by an affidavit [for form of affidavit see Part II(B)] verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed. Notices of such application shall be given to the minor and the proposed guardian, *Vide* Rule 3, Order XXXII of the C P Code

Note—If the proposed Guardian does not appear to give his consent to his appointment as guardian of the minor the Court appoints a pleader or an officer of the Court as guardian of the minor defendant

Who may act as next friend or be appointed as a guardian

Any person who is of sound mind and has attained majority and who has not got any interest adverse to that of the minor may act as next friend or be appointed guardian

When a minor has a guardian appointed or declared by competent authority no person other than such guardian shall ordinarily act as the next friend of the minor or be appointed his guardian. *Vide* Rule 4, Order XXXII of the C P Code. When there is no person fit and willing to act as a guardian the Court will appoint any pleader or one of its officers to be such guardian

Compromise

No next friend or guardian for the suit shall, under Rule 7, Order XXXII of the C P Code, without the leave of the Court expressly recorded in the order-sheet, enter into any agreement or compromise on behalf of a minor with reference to the suit

Receipt of property or money under decree.

A next friend or guardian shall not without the leave of the Court, receive any money or other moveable property on behalf of the minor either by way of compromise before decree or order or under a decree or order in favour of the minor

Such next friend or guardian unless he is a certificated guardian of property of the minor shall furnish security for taking moveable property or money on behalf of the minor as directed in Rule 6, Order XXXIII of the C P. Code.

Retirement, removal or death of a next friend or guardian.—In such a case the Court appoints a new next friend or guardian for conducting the case on behalf of the minor. *Minor attaining majority* — A minor attaining majority during trial may elect either to proceed with the suit or application (Rule 12, Order XXXII of the Code) or if he thinks that the suit is unreasonable or improper, may apply under Rule 14, Order XXXII to have the suit dismissed. **Persons of unsound mind:**—The above provisions shall also apply to a person of unsound mind who is a plaintiff or a defendant in a case.

Rulings.

Consent of natural guardian is essential before he can be appointed guardian of a minor party—If no consent is given Court will appoint a guardian of the minor ; 20 C. L. J. 469 and 17 C. W. N. 549. An officer of a court when appointed guardian *ad litem* of a minor cannot get any fees for his troubles. 3 M. I. A 329, but a pleader when appointed guardian *ad litem* gets fees prescribed by the High

Court In Bengal Pleaders are appointed guardians of minors in suits and proceedings under the special rules framed by the Calcutta High Court Appointment of a Court guardian should be communicated to the minor and his natural guardian if any—41 All 235 A minor is not properly represented though there may be an affidavit that the proposed guardian is willing to act 24 C W N 172 (notes) The proposed guardian must appear and give his consent to his appointment as guardian—else the Court must appoint a guardian of the minor 26 C W N 781 When a next friend does not act properly—the Court should appoint another next friend to represent the minor 27 M L J 405 *If no suit is brought on behalf of a minor by his guardian* the minor on attaining majority may bring a suit as provided in section 7 of the Limitation Act—*Jogindra Nath v Hemanta Kumari*, I L R 32 Cal 127 P C = 8 C W N 809 P C Unrepresented minor—its effect —As if he was not a party—50 I C 783 The decree and proceedings in the case do not bind such an unrepresented minor

Effect—where no guardian is appointed in the suit

If no guardian is appointed in the suit but summons is served upon a guardian appointed under Act VIII of 1890—who does not appear to give his consent to his appointment as guardian the decree must be set aside *Daleshar Proshad v Rewal Mehton*, I L R 24 Cal 25 Read 24 C W. N 172 notes But ordinarily the Court should appoint the guardian appointed by a competent authority to be the guardian *ad litem* of a minor deft 29 All 290 !

Minor—Hindu boys and widows.—The father and after him the mother are the natural guardians of minor Hindu boys under the Hindu law. In the case of a minor Hindu widow, the relations of her deceased husband can be appointed guardian in preference to her paternal relations—*Khudiram v Bonuani Lal* 1 L R 16 Cal 584

Married girl—The husband should be appointed guardian *Kateram v Gandhone*, 23 W R. 178.
Guardian of Mahomedan minor girl—A Mahomedan mother can be appointed guardian of her minor daughter, *Nurkadir v Zaliakha Bibi*, 1 L R 11 Cal 649 but not after her re-marriage 1917 P. W R 32, 11 C L J 632

After marriage of such a girl her husband should be appointed guardian *Bulahun Bibee v. Fazuldullah*, 20 W R. 441. In case of a Shia Mahomedan when the girl is over 7 years old, the father is preferred to the mother *Lardli Bequm v Mahomed Amir Khan*, 1 L R 14 Cal 615. **Minor under the Court of Wards.**—Manager of the Wards estate ordinarily represents the estate 46 I. C 316

N B See rulings under the Guardians and Wards Act in Part III

Notice of application.

Relatives of the minor under whose care the minor lives should get notice before a guardian *ad litem* is appointed; *Suresh Chandra v. Jagut Chandra*, 1 L R. 14 Cal. 204. *Compromise.*—See Chapter on Compromise in Part I.

Can a guardian bind a minor that the suit be decided on the statement on oath of a person?

If there be no fraud then such as agreement is binding on the minor, even if entered without the leave of the Court *Sheo Nath v Sukhlal* I L R 27 Cal 229=4 C W N 327

Arbitration

A guardian of a minor can refer a matter to arbitration *Balaji v Nana*, I L R 27 Bom 287

For scale of fees allowed to pleader guardians of minor parties—See Chapter on the Legal Practitioners Act in Part IV

Abatement of suit

(1) Where the defendants are jointly and severally liable non substitution of heirs of a deceased defendant does not abate a suit 59 I C 890

(2) A suit does not abate if there be substitution in Review Proceeding though the plaint might not have been amended 16 C L J 571

(3) No substitution is allowed when the defendant was dead before suit 51 I C 160

(4) Plea of ignorance of death cannot save limitation regarding substitution of heirs 12 J C 871

APPENDIX

TO PART I.

Hints for drawing up various kinds

— OF —

Plaints in suits frequently filed

— IN —

CIVIL COURTS

— WITH —

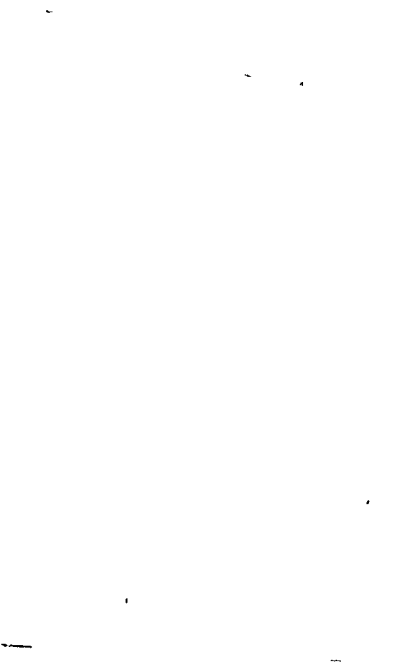
MODELS

— OF —

Plaints and Corresponding Written Statements

— AND —

A few issues arising on
Some of the Pleadings



APPENDIX TO PART I.

FORMS OF PLAINTS, WRITTEN STATEMENTS AND ISSUES WITH HINTS

No 1 —Hints for drawing up a plaint in a suit on a bond

Limitation for a suit on an ordinary unregistered bond is three years from the date when the sum becomes payable. In case of a registered bond the period of limitation is 6 years from the date on which the loan became payable. If the execution of the bond is admitted but the receipt of the whole amount or a part thereof only is denied the onus lies on the defendant to prove his plea. 4 I C 178 38 C L J 114 6 C L J 659. Ordinarily recital in the document as to the passing of the consideration is enough proof thereof. 1913 Pat 20 38 C L J 114. If the defendant pleads that he was minor at the time of execution of the document it is for him to prove the allegation. 63 I C 525. Where the bond recites payment before the Sub Registrar the defendant has to prove non passing of consideration. 1921 Mad W N 747.

No 1 Suit on a simple money bond

In the Court of the Subordinate Judge of Patna
Plaintiff—

Mr son of resident of Thana
District by profession

Defendant—

Mr son of resident of Thana
District by profession

Suit for recovery of Rs

The above named plaintiff states as follows —

1 That on the 27th day of March 1910, the defendant borrowed from the plaintiff Rs 1200 at

Patna at an interest of 12 per cent. per annum agreeing to repay the amount with interest on or before the 1st day of January 1912. The defendant executed and registered a bond for the said amount in plaintiff's favour. The said bond is annexed herewith.

2. That the defendant made the following payments on account of interest.

(a) Rs. 25 on the 30th of June 1910 ;

(b) Rs. 104 on the 4th of May 1912.

3. That after crediting the aforesaid payments, the sum of Rs..... is still due to the plaintiff from the defendant under the aforesaid bond; and that the defendant has failed to pay the amount though repeated demands were made.

(4) That plaintiff's cause of action for this suit arose on the 1st day of January, 1912, at.. .., within the jurisdiction of this Court.

5. The value of the subject-matter of the suit for purposes of jurisdiction and court-fees is laid at Rs.....

The plaintiff claims—

(a) That a decree be passed against the defendant for the sum of Rs.....with interest at 6 per cent. per annum from the date of suit till realisation.

(b) That a decree be passed against the defendant for costs of this case.

I.....the plaintiff in this case declare that the contents of this plaint are true to my knowledge

and I verified it at my house at _____ at A.M. on the
4th day of June 1923

Signature

No 1 —Written statement for plaint No 1

1st Court of the Subordinate Judge, Patna

Suit No. _____ of 1913

Plaintiff—

Defendant—

The defendant in the above case states as follows —

1 That he did not execute the bond in suit

2 That he did not make any payment as alleged by the plaintiff

3 That the suit is an outcome of ill-feeling between the parties

4 That the suit is liable to be dismissed.

Verification

No 2 —Hints for drawing up a plaint in a suit on a handnote

Suit on a promissory note —This suit is brought within three years from the date of the handnote. But if interest was paid or a part of the principal was paid and endorsed in the defendant's hand writing a fresh period of limitation will start from the date of payment under Section 20 of the Limitation Act. *W. Karta of a joint Hindu family executes a hand note and money for use all the members of the family are jointly*

for the debt, 23 Mad 597 7 C W N 725 A promissory note does not cease to be a promissory note simply because it may happen to be attested by witnesses 14 A W N 204 8 Mad 87 Vide *contra* 33 M L T 603 43 I C 55 The executant of a hand note is *prima facie* liable for the debt whether he took the amount himself or signed the same as a surety 64 I C 742 If there be no provision as to interest in the hand note the Court may allow interest at 6 per cent per annum 40 I C 350 Where interest is high it may be reduced by the Court under sec 3 of the Usurious Loans Act A negotiable instrument can be assigned by endorsement at the back For what is negotiable instrument see 22 C W N 1136 If an unstamped promissory note is admitted in evidence the Appellate Court cannot reject that 40 M L J 479 27 C W N 513 73 I C 65 Ordinarily a hand note which does not bear any stamp will not be accepted in evidence 60 I C 552 Where the hand note should have borne stamp as a bond it may be accepted in evidence on payment of penalty like a bond 67 I C 640 But where the hand note required stamp as on a hand note but bears none it cannot be admitted in evidence Vide Sec 35 Cl (6) of the Indian Stamp Act In case of a receipt however it may be received in evidence on payment of penalty

No 2—Suit on a hand note

[Description of the Court and parties as in plaint

No 1]

The above named plaintiff states as follows —

1 That on the day of 1913 defendant borrowed Rs from the plaintiff at by executing a hand note and agreeing to pay interest at 12 per cent per annum and to repay, on demand the principal amount with interest The hand note is annexed herewith

2 That the defendant has not paid any money except rupees paid on the day of and that the sum of rupees is still due from the defendant.

3 That the defendant refused to pay the amount due though repeated demands were made

4 The cause of action for this suit arose on (the date of the hand note) and on successive dates on which the defendant refused to make further payments at within the jurisdiction of this Court

5 As para 5 of plaint No 1

The plaintiff claims decree for Rs with interest at per cent per annum from the date of suit till realisation with costs of the case

[Verification as in plaint No 1]

No 2. Written statement for plaint No 2

[as in No 1]

The defendant in the above case states as follows —

1 That the defendant executed the hand note in suit on receipt of Rs

2 That the defendant made the following payments —

(1) Rs 900 on the 6th of June 1912 ,

(2) Rs 444 , 8th of June 1912

3 That nothing is due to the plaintiff

4 The plaintiff has no cause of action for this suit and that the suit may accordingly be dismissed

Verification

No 3 —Hints for drawing up a plaint in a suit for house rent

The suit may be based upon a contract written or oral
Written agreements may be either registered or unreg

N B—Plaints and written statements in rent suits should be carefully drawn up and special care should be taken to as certain as to who ought to be made parties to the suit. The necessity of having the proper parties on the record is obvious as otherwise the decree may not be a rent decree and under some circumstances the suit may even fail. It may be here noted that a tenant and his heirs remain liable for rent of an occupancy holding even after transferring the same unless there has been a formal surrender (*I L R 19 Cal 790*). In case of a transferable occupancy holding the law is otherwise—Read *11 C W N 217*.

No 4 Suit for arrears of rent

[Description of the Court and parties as in plaint No 1]

The above named plaintiff states as follows —

1 That the defendant holds under the plaintiff a *Jote* of *Bighas* situate in village *Mouja* at an annual rental of Rs as payable in 4 equal instalments

2 That rent and cesses of the said *jama* as given below are due from the defendant

3 That the defendant refused to pay the amount due though repeated demands were made and that the plaintiff is consequently entitled to get 25 per cent of the amount due as damages in addition to his dues

4 That the cause of action for this suit arose at the end of each *kist* of every year

5 As para 5 of plaint No 1

6 The plaintiff claims a decree for Rs including cesses and damages with *future* interest at per cent per annum till realisation with costs of the case

Accounts —

	Rent	Cesses	Paid	Arrear
1312	Rs 16	8 as	Rs 2	Rs 14—8
1313	Rs 16	8 as	0	Rs 16—8
1314	Rs 16	8 as	0	Rs 16—8
1315	Rs 16	8 as	0	Rs 16—8
				<hr/> Rs 64
Damages				Rs 16
				<hr/>
Total claim —				Rs 80

N B For drawing up a plaint under sec 148A of the Bengal Tenancy Act in a suit by a co-sharer landlord making other co-sharer landlords *pro-forma* defendants, see Bengali Appendix plaint No 2 and hints given there (*Vide page 22*)

Schedule of land

(Boundaries Settlement Dag Number)

[Verification as in plaint No 1]

No 4 Written statement to plaint No 4

[As in No 1]

The defendant . [as in No 1.]

1 That the defendant does not hold any *Jama* of Rs . under the plaintiff

2 That the lands described in the schedule to the plaint are defendant's rent free lands

3 That the suit may be dismissed with costs

[Verification]

N B Special suits under the Bengal Tenancy Act have been dealt with at length in the Bengali Appendix Hints for drawing up plaints and models have been given in the Bengali

V B—Plaints and written statements in rent suits should be carefully drawn up and special care should be taken to ascertain as to who ought to be made parties to the suit. The necessity of having the proper parties on the record is obvious as otherwise the decree may not be a rent decree and under some circumstances the suit may even fail. It may be here noted that a tenant and his heirs remain liable for rent of an occupancy holding even after transferring the same unless there has been a formal surrender (I L R 19 Cal 790). In case of a transferable occupancy holding the law is otherwise—Read 11 C W N 217.

No 4 Suit for arrears of rent

[Description of the Court and parties as in plaint No 1]

The above named plaintiff states as follows —

1 That the defendant holds under the plaintiff a *Joti* of Bighas situate in village Mouja at an annual rental of Rs as payable in 4 equal instalments

2 That rent and cesses of the said *jama* as given below are due from the defendant

3 That the defendant refused to pay the amount due though repeated demands were made and that the plaintiff is consequently entitled to get 25 per cent of the amount due as damages in addition to his dues

4 That the cause of action for this suit arose at the end of each *kist* of every year

5 As para 5 of plaint No 1

6 The plaintiff claims a decree for Rs including cesses and damages with *future* interest at per cent per annum till realisation with costs of the case

Accounts —

	Rent	Cesses	Paid	Arrear
1312	Rs 16	8 as	Rs 2	Rs 14—8
1313	Rs 16	8 as	0	Rs 16—8
1314	Rs 16	8 as	0	Rs 16—8
1315	Rs 16	8 as	0	Rs 16—8
				<hr/> Rs 64
Damages				Rs 16
				<hr/>
Total claim —				Rs 80

N B For drawing up a plaint under sec 148A of the Bengal Tenancy Act in a suit by a co sharer landlord making other co sharer landlords *pro forma* defendants see Bengali Appendix plaint No 2 and hints given there (*Vide page 22*)

Schedule of land

(Boundaries Settlement Dag Number)

[Verification as in plaint No 1]

No 4 Written statement to plaint No 4

[As in No 1]

The defendant [as in No 1]

1 That the defendant does not hold any part of Rs under the plaintiff

2 That the lands described in the schedule to the plaint are defendant's rent free lands

3 That the suit may be dismissed with costs

[Verification]

N B Special suits under the Bengal Tenancy Act been dealt with at length in the Bengali Appendix drawing up plaints and models have been given in

Appendix Some hints for drawing up plaints in a few suits under the B T Act are given below.

No 4 (a) Hints for drawing up a plaint in a rent suit under section 148 (a) of the B T. Act

In a plaint of a suit of this kind the co sharer landlords should be made parties, and the suit should be for the entire rent of the holding due to the plaintiff as well as to the co sharer landlords. The plaint should disclose that plaintiff tried to ascertain from the co sharer landlords as well as from the tenants the arrears of rent due to the share of the co-sharer landlords otherwise, the decree passed would be a money decree and not a rent decree. Before drawing up a plaint of this description read 15 C W N 820 and also 18 C W. N 1016. If the co-sharer landlord who has not separate collection of rent brings a suit without making the other co-sharers *proforma* defendant, the suit is liable to be dismissed 31 Cal 707. It must be remembered at the time of drawing up written statements for rent suits that if the defendant admits the *jama* or a portion of the claim the Court will refuse to accept the written statement filed by the defendant unless the amount admitted to be due be deposited in Court (see Sec 150 of the B T Act).

[For models of plaint and written statement see Bengali Appendix pages 22 to 27]

No 4 (b) Hints for drawing up a plaint in a suit for *adhi* rent

A tenant may take lease of a land agreeing to give a share of the produce to the landlord as rent. A suit against such a tenant for recovery of price of crops due would be a suit for rent triable in the regular file of a Court. But where a labourer undertakes to cultivate land on behalf of the landlord agreeing to take a share of the produce in lieu of his labour he does not become a tenant and a suit for recovery of price of crops due will not be a rent suit but a money suit, and a suit of this description may be tried by S C Court (14 C. W. N. 629 and 17 C W.

N 69) Whether a *Bhagchasee Burgadar* or *Batindar* or an *adhidar* is a tenant or not will depend upon the contract For drafting plaint in a suit of this nature please read 21 C W N 595 [For models of plaint and written statement see Bengali Appendix pages 30 to 32]

No 4 (c) Suit for Burga paddy

For law on this subject read 21 C W N 595 as also notes given at the top of plaint for *adh* rent in the Bengali Appendix

[For models of plaint and written statement see Bengali Appendix pages 32 to 33]

No 5 Hints for drawing up a plaint in a suit under sec. 66 of the Bengal Tenancy Act

The time (15 days) allowed by the Court to defendant who is not an occupancy raiyat may be extended on defendant's application after decree 3 C W N 628 26 Cal 639 Where a tenant is ejected for non payment under this section the landlord is entitled to get possession of the land with crops standing thereon at the time of delivery of possession 5 Cal 135 A suit under this section may be brought even when rent is payable in kind, 2 Cal 374. The decretal sum cannot be realised by sale of the holding as a tenant who is an under raiyat has no transferable interest in the *jote* Such a decree should be executed like a money decree If the landlord's interest in the land ceases after passing of the decree but before delivery of possession the landlord cannot get *khaz* possession He can only execute the decree like a money decree 41 Cal 926 P C If a suit under this section be for more than one year's rent the Court may order that unless rent of one year with proportionate cost be deposited within 15 days the tenant will be ejected 16 C W N 104

N B Section 66 contemplates ejectment of tenants who are not permanent tenure holders raiyats at fixed rate or occupancy raiyats

[For models of plaints and written statement Appendix pages 27 to 30]

No 5 (a) Hints for drawing up a plaint in a suit for enhancement of rent under sec 30 cl (b) of the B T Act

This suit is for enhancement of rent of an occupancy holding. The plaint must disclose that the defendant has right of occupancy in the land that he pays money rent and that rent has not been enhanced for the last 15 years and that there has been a rise in the price of staple food crop during the currency of the present rent. Such a suit may also be brought on other grounds mentioned in clauses (a) (c) and (d) of section 30 of the B T Act. If rent is payable partly in cash and partly in kind then no suit lies under this section—24 C L J 373. A suit for enhancement under sec 30 is liable to be defeated if the holding does not comprise entire plots of land that is if the holding comprises some entire plots and share in some other plots. 24 C W N 1022. It is the duty of the Court to refer to price lists published in the official Gazette even if the parties do not adduce evidence regarding the price of staple food crop during the currency of the tenancy. 37 Cal 742. For calculation as to the amount by which rent can be enhanced read sec 32 of the B T Act. The two decennial periods taken as basis of comparison must be entirely different and must not even partially coincide. 11 C L J 38ⁿ. The Court may in a fit case allow gradual enhancement under sec 36 of the B T Act.

[For models of plaints and written statements see Bengal Appendix pages 35 to 37]

No 6 Hints for drawing up a plaint in a suit based on khata accounts

If the plaintiff had supplied articles to the defendant on credit receiving payments from time to time and there are regular accounts in the plaintiff's shop to show this the defendant may be sued for the amount that may be found due. A demand should be made before the suit is instituted. The liabilities of the defendant would ordinarily be limited to transactions within three years prior to the institution of the suit. But, if the

payments made within three years before the suit had been appropriated towards dues older than three years the accounts filed should clearly show this

A true copy of the accounts together with the original account book should be filed with the plaint. The ministerial officer of the Court compares the copy of the account with the original book and then returns the original account book to the plaintiff for production at the time of the hearing. This procedure is full well a facility of businessmen (22 Bom 671). Copy prepared by the ministerial officer is exempt from stamp duty, 26 Bom 522. The plaintiff cannot claim interest in the absence of an express contract but he may claim damages for detention of his money 22 C W N 483 42 Mad 661

Court fee is payable on the total amount claimed

No 6 Suit for money due on Khata account

1 The plaintiff owns a grocery shop in village Kajali dealing in rice pulse ghee etc

2 The defendant used to purchase rice and pulse, ghee etc from the aforesaid shop of the plaintiff on credit and had an account opened for such transactions

3 The defendant used to make part payments of his dues on account of purchases made from time to time in his running account

* 4 The said defendant stopped all transactions of credit purchase with the close of the year 1925 and the dues of the defendant to the plaintiff after making deduction for payments made from time to time, come to Rs 150/- as per Schedule of accounts appended hereto,

5 The defendant deferred payments on flimsy pretexts for a pretty long time and thus compelled the plaintiff to bring this suit

6 The plaintiff's transaction with the defendant ceased on or about the 31st December 1925 from

which date [also on dates of transactions] the cause of action for the present suit arose

7 The suit is valued at Rs 150/- for determination of Court Fees and jurisdiction of this Court

The plaintiff therefore prays —

(1) That the suit be decreed for Rs 150/- with interest on that sum at the rate of 6 per cent per annum as compensation from the 31st of December 1945 till realisation of same by execution of the decree

(ii) All legitimate costs of the litigation

Schedule A.

Here put in a statement of purchases and payments made with dates thereof and give an abstract of account

No 6 Written statement to the plaint No 6

1 That the suit is barred by limitation The defendant admits having had transactions with the plaintiff, but denies having any dues left on that account as he made all payments till the close of the year 1923 when he ceased purchasing from the plaintiff's shop

2 The plaintiff has no cause of action against the defendant, so far as the defendant has been able to ascertain from enquiries, one Dhana Munshi—a some time servant of the defendant dismissed some 3 years hence—made purchases from the said shop of the plaintiff in defendant's name, and the defendant accordingly cannot be made liable for purchases, if any, made by a discharged servant of his without any authority written or otherwise from the defendant, after the latter had closed all transactions with the plaintiff's shop

The defendant, therefore, prays

(a) That the suit be dismissed with costs

Verification

No 7 Hints for drawing up a plaint in a suit for Malicious prosecution

In this suit the plaintiff should disclose that he has sustained some loss in body and mind on account of the defendant's prosecuting a criminal case against him. In order to succeed in an action for malicious prosecution the plaintiff must prove that the defendant proceeded with the criminal case against him without just and probable cause. The essential ingredients of an action for malicious prosecution have been laid down by Mulhargy J in the case of *H. Croudy vs L. O. Reilly* 17 C W N 555 (at page 557). Action for maliciously putting the law in motion lies in all cases where there is a concurrence of the following elements—(i) The commencement or continuance of a criminal proceeding (ii) its legal causation by the present defendant against the plaintiff who was defendant in the original proceeding (iii) its *bona fide* termination in favour of the present plaintiff (iv) the absence of probable cause for such a proceeding (v) presence of malice therein (vi) damage conforming to legal standards resulting to the plaintiffs. In order to maintain a suit for malicious prosecution it is not essential that there should have been prosecution in the sense in which the term is used in the Cr P Code. Thus in a case where the defendant maliciously and without just cause started a sanction proceeding against the plaintiff who was obliged to defend himself, it was held by Teunon and Newbold J J that the plaintiff had a cause of action and must be given an opportunity to prove his case (1). Application for sanction was held to be in this case the preliminary or initial stage of a criminal prosecution. Malicious prosecution therefore, commences as soon as the prosecutor has taken the initial step namely, he puts in his complaint before a Magistrate or a Court no matter what the result might be (2). Thus a

(1) 27 C W N 388 49 Cal 1035

(2) 19 C W N 935, 64 I C 741

suit for malicious prosecution will lie even if the complaint was dismissed for default or on some technical legal ground (3) Unless summons be issued by the Cr Court no suit for malicious prosecution will lie (4) The burden of proving the case is on the plaintiff in this case as in others and the finding of the Criminal Court about the plaintiff's innocence would not alone be enough (5)

The period of limitation in these suits is one year from the date of termination of the proceeding or acquittal of the plaintiff as the case may be (See Art 23 Limitation Act)

No 7 **Plaint in a suit for malicious prosecution**
[Description of the Court and parties as in plaint No 1]

The above named plaintiff states as follows -

1 On the day of 19 the defendant obtained a warrant of arrest against the plaintiff from the Court of the Sub Divisional Magistrate, Shahabad, on a false charge of and the plaintiff was arrested there on, and detained in *Hajat* for 3 days and had to give bail in the sum of Rs 200 to obtain his release

2 In so doing the defendant acted maliciously and without reasonable or probable cause

3 On the day of 19, the aforesaid Magistrate dismissed the complaint of the defendant and acquitted the plaintiff

4 In consequence of the above prosecution the plaintiff suffered pain of the body and mind and was prevented from transacting his business, and was injured in his credit and incurred expenses to the extent of Rs 240 in obtaining his release from the said imprisonment and in defending himself against the

(3) 42 All 305

(4) 15 C W N 917, 36 All 8

(5) 17 C W N 435 36 Mad 375 72 I. C 411

said complaint, and as many persons supposed the plaintiff to be a criminal the plaintiff has been lowered in their estimation

5 That the cause of action arose on at within the jurisdiction of this Court

6 The plaintiff claims Rs 500 as damages for pain of body and mind and for loss of business and reputation as per account given and Rs 240 as damages for expenses incurred in the Criminal Court For purposes of jurisdiction and court fees the plaintiff values his suit in all at Rs 740

The plaintiff claims —

(a) a decree for Rs 740 with costs of the case against the defendant

(b) such other relief as the Court may think fit to grant

Accounts of claim

[Verification]

No 5 Written statement for plaint No 7

[As in No 1]

The defendant, etc

1 That the defendant *bonâ fide* prosecuted the plaintiff in the Criminal Court and that he had reasonable and probable cause for the same

2 That the plaintiff is a man of bad antecedents and that he was once convicted in a theft case in the year 1910 and that the plaintiff has no position in society

5 That the plaintiff is not entitled to claim any damages and that he did not incur expenses more than Rs in defending the criminal case and that the claim is excessive

4 That

Verification

No 8 Hints for drawing up a plaint in a simple Mortgage suit

Before drawing up a plaint in a suit on a simple mortgage bond it should be first of all clearly ascertained whether the bond in question is a mortgage bond. The leading characteristics of a simple mortgage are (i) a personal obligation on the part of the mortgagor to repay the debt and (ii) a contract empowering the mortgagee to put up the property to sale in the event of the mortgagor failing to pay the amount of debt. These two elements of a simple mortgage may be either express or implied (1). Thus the mortgagee in these cases has a two fold cause of action one arising out of the breach of the personal obligation and the other arising out of the contract of hypothecation. It is thus open to him to put both these causes of action at once in one suit or in the alternative in different suits. The mortgagee's failure to seek one or other of the remedies in the same suit does not in any way bar his right to enforce the remaining remedy by a separate suit (2).

In considering the question of personal liability it should be borne in mind that a loan *prima facie* is a personal liability and that such a liability is not displaced by the mere fact that security is given for repayment of loan with interest but the nature and terms of the security may negative any personal liability on the part of the borrower (3).

It should be noted that there being two distinct causes of action involved in a simple mortgage there are different periods of limitation for each. Thus mortgagee cannot get a personal decree if the suit is brought after six years from the date fixed for payment. If however he wants to proceed against the property he gets 12 years instead of 6 years.

It is not everyone who ever had an interest in redemption that is entitled to be impleaded in a mortgage suit. The interest which entitles him to be impleaded is an interest which he

(1) 34 All 446 38 I C 37

(2) 3 All 157

(3) 44 Cal 388 P C at page 400

passed at the date of the suit. Even the mortgagor is not a necessary party to a suit instituted on his own mortgage if he had in the meantime lost or parted with his right of redemption. But if the mortgage is a simple mortgage and the mortgagee contemplates moving for a supplementary decree for the realisation of his dues on the mortgagor a personal covenant then the mortgagor would be a necessary party even though he had parted with his equity of redemption in the mortgaged property. A trespasser in possession of the mortgaged property is not a necessary party as law does not permit the mortgagee to kill two birds with one stone. He must first foreclose his mortgage before he can be permitted to deal with a trespasser.

The defendant may put the plaintiff to prove due attestation and execution of the deed or plead payment or deny passing of consideration in full or in part. In *ex parte* cases the bond need not be proved by an attesting witness after the recent amendment. The law as to the attestation of the mortgage bond has been dealt with in the Chapter on Ready Reference. The defendant may pray for reduction of interest under sec. 3 of the Usurious Loans Act (Vide also Hints given to plaint No 1). The Court is bound to allow decree for interest at the bond rate [or at a rate allowed by Court] till the day of grace.

No 8 Suit on a simple mortgage bond

[Description of Court and parties as in plaint No 1]

The above named plaintiff states as follows —

1 That the plaintiff is the mortgagee of the lands described in the *Schedule B* annexed to this plaint and that the said lands belong to the defendant.

2 The following are the particulars of the mortgage —

(a) The said mortgage bond in suit was executed by the defendant in plaintiff's favour on the 27th day of June, 1910, on receipt of Rs the defendant agreed to pay interest at the

of per cent per annum and hypothecated the properties described in the Schedule B

(b) That the defendant made payment of Rs from time to time as shown in the account given in *Schedule A* annexed to this plaint and that the sum of Rs is still due to the plaintiff from the defendant under the said mortgage

3 That the defendant has not paid the amount due though demands were made

4 That plaintiff's cause of action for this suit arose within the jurisdiction of this Court on (*i e* the day fixed in the bond for repayment of the money)

5 As in para (5) of plaint No 1

The plaintiff claims —

(i) That decree be passed against the defendant for the sum of Rs with future interest at the bond rate till the day of grace with costs of the case and that a time be fixed in the decree for payment of the amount due and that in default of payment within the time allowed, plaintiff's dues be satisfied by sale of the mortgaged properties

(ii) That in case the proceeds of the sale are found to be insufficient to satisfy the amount due to the plaintiff, then liberty be reserved to the plaintiff to apply for a personal decree for the balance

Schedule A

(Account)

Schedule B

(Description of properties as given in the bond)

[Verification as in plaint No 1]

No 8 Written statement for plaint No 6

[As in No 1]

The defendant, etc

1 As to Rs claimed by the plaintiff, the defendant is entitled to a set off for Rs as price of goods sold and delivered by the defendant to the plaintiff

Particulars are as follows —

1907 January 25	Rs 150
March 1st	Rs 400
	<hr/>
	Rs 550

2 That besides the above the defendant made the following payments in cash and that plaintiff has not credited the said sums in his account

Particulars are as follows —

1909 March 1st	Rs 200
1910 June 2nd	Rs 500
	<hr/>
	Rs 700

3 That on an adjustment of accounts it will be seen that the plaintiff's bond was satisfied and that the sum of Rs is due to the defendant from the plaintiff

4 That plaintiff has no cause of action for this suit

5 That the bond was not legally executed and attested

Verification

Note — Court fees have to be paid on the amount for which set off is claimed

No 9 Hints for drawing up a plaint in a suit on a usufructuary mortgage bond

In case of a usufructuary mortgage—mortgagee gets possession of land and enjoys the usufruct and the same is credited towards the mortgage debt according to the terms of the contract between the parties. A usufructuary mortgagor may not be personally liable for the debt unless he dispossessed the mortgagee from the land, 24 Cal 677. If however, the mortgagee is to appropriate a part of the usufruct towards interest and to pay the balance to the mortgagor the mortgage becomes a simple mortgage for all intents and purposes. 21 Bom 267. A usufructuary mortgage bond has to be proved like an ordinary mortgage bond (Vide note before the suit on a simple mortgage bond.)

Plaintiff in a suit like this may pray for recovery of possession of the land if he had been dispossessed and retain possession till his dues would be satisfied in terms of the bond or plaintiff may pray for a decree against the property, and when the bond though in form a usufructuary bond is in essence a simple mortgage bond, the plaintiff may also pray for money decree for balance after sale of the property, provided his claim for a money decree is not time barred by the 6 years rule of limitation applicable in cases of simple registered bonds. A usufructuary mortgagee in possession may sue a tenant for rent, 18 C. W. N 1016.

It must be remembered that personal liability in these cases will depend on the terms of the contract and the intention can be gathered from the terms as incorporated in the deed. Ordinarily other mortgagees may not be made parties in a suit on a usufructuary mortgage bond (Read Order XXXIV R 1 of the C P Code). A prior mortgagee is not a necessary party to a suit for sale or foreclosure (38 Mad 927, 39 Bom 138 145.)

No 9 Suit on a usufructuary mortgage bond.

The plaintiff in the above suit states as follows.—

1. That the defendant executed a registered mortgage bond on the 1st of March 1914 in favour

of the plaintiff on receipt of a sum of Rs 36/- and agreed that the mortgaged plot of land measuring about 3 Bighas and 2 cottahs as described in Schedule A would be in possession of the plaintiff for a period of 12 years from the date of execution of the bond i.e 1st March 1925 and that after the expiration of the aforesaid 12 years the plaintiff would vacate the said plot of land when the amount of loan coupled with interest thereon should have been paid from the usufruct of the land. It was besides agreed upon by the defendant that should the plaintiff be dispossessed from the land, the defendant would be liable for a proportionate principal debt from the date of dispossession carrying interest at the rate of 6 pies per rupee per month

2 That the plaintiff in terms of the mortgage bond was put in possession of the mortgaged property and continued to be in possession thereof for a period of 5 years. The plaintiff thus realised proportionately Rs 15/- of the principal debt when the defendant dispossessed him in June 1920

3 That inspite of repeated demands and requests, the defendant has not put plaintiff back to possession of the property

4 That by this act of dispossession of the plaintiff by the defendant, the latter has made himself liable for mortgage debt of Rs 21/- i.e $\frac{1}{3}$ th of the principal debt together with interest thereon at the rate of 6 pies per month. Thus the accounts given below will shew that the plaintiff is entitled to get from the defendant as Rs 21/- as principal and Rs 35.6 as interest i.e Rs 56.6 as in all

5 The cause of action for this suit arose within the jurisdiction of this Court in village (where the

property is situated)—on the day of 19 (i.e. the date on which he was dispossessed)

6 The suit is valued at Rs for determination of Court fee and jurisdiction of the Court

The plaintiff accordingly prays that —

(a) As No 1 in plaint No 8

(b) As No 2 in plaint No 8

(c) Any other relief etc

(Plaintiff may also pray for recovery of possession in the alternative)

Schedule A

(Description of the mortgaged property)

<i>North</i>	<i>South</i>	<i>East</i>	<i>West</i>
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Schedule B

Account

[Verification]

Written statement for plaint No 9

The defendant in the above case states as follows —

1 The defendant never dispossessed the plaintiff from the land on the 1st June 1920 as set forth in the plaint. The plaintiff still continues to be in possession of the mortgaged property and hence the plaintiff has no cause of action.

2 The claim of interest as put forward by the plaintiff is excessive. The defendant is an illiterate person and was never apprised of the provision relating to interest in the bond which was not read over to him. The claim for interest made by the plaintiff is hard and unconscionable, and consequently the plaintiff cannot legally claim interest charged. The prevailing rate of interest in the

locality to which the defendant belongs being 12 per cent per annum, assuming, but never admitting for sake of argument that the plaintiff may claim interest, he cannot realise anything more than 12 per cent per annum as interest

3 What appears to the defendant to lie at the root of the present case falsely brought by the plaintiff is that the defendant could not see his way to consent to a proposal of sale of a piece of garden land comprised by the mortgage deed to the plaintiff

4 The defendant accordingly prays that
the suit be dismissed with costs.

Verification as in plaint No 1

No. 10 Hints for drawing up a plaint in a suit on Mortgage by conditional sale

The defendant in such a suit is never personally liable for any portion of the debt (27 All 592 16 Cal 540) The mortgagee does not get an absolute right to the property unless he gets a final decree for foreclosure In a suit like this the Court at first passes a preliminary decree allowing some time to the defendant to pay off the decretal amount and in case of non payment of the decretal amount within the time fixed, final decree for foreclosure is passed and the ownership of the property passes absolutely to the plaintiff (40 I C 371) Sometimes it becomes difficult to ascertain whether the transaction was really a mortgage by conditional sale or a sale out and out In such cases evidence as to surrounding circumstances is permissible to shew the real nature of the transaction (17 C W N 1053 33 All 340) Read also 1 M W N 164 Read also *Maungky vs Ma Shon Lo* 22 C W N 257 P C (1917)

In a recent Privy Council case of *Jhend Singh v Seet Wahiduddin* (reported in 21 C W N 66=38 All 576=31 M J 750=10 Bur L T 131=19 Bom L R 10=36 I C 38,) it held on a construction of deed of a sale with a contra-

agreement to repurchase on certain terms that the intention of the parties to the instrument as gathered from the language of the documents themselves viewed in the light of the surrounding circumstances was that the transaction was a sale and not a mortgage. Stipulation to pay interest will lead to the presumption that the transaction was a mortgage (65 I C 673). Stipulation as to the date of repayment is a very important test (11 C W N 400). This will go to shew that the transaction was a mortgage [For other particulars see Hints to plaintiffs Nos 8 and 9]

No 10 Suit on a mortgage bond by conditional sale

The plaintiff in the above suit states as follows —

1 The defendant mortgaged a piece of land described in *Schedule A* of the plaint situate in village Police station within the jurisdiction of this Court, on the day of of the year on receipt of a sum of Rs carrying interest at the rate of per cent per annum and executed and registered the mortgage bond by conditional sale which is filed along with this plaint

2 That the defendant also agreed to put plaintiff to possession of the land in lieu of interest or in the alternative to pay off the whole amount of debt with interest at 12 p c p a thereon by the month of the year 19 ,

3 That it was besides agreed upon by the defendant in terms of the bond that in the event of his failure to repay the entire amount of debt on the date fixed in the bond, the plaintiff would be entitled to get a decree for foreclosure and possession from a competent Court

4 That the annexed statement of accounts as given in *Schedule B* would show that plaintiff's

dues from the defendant under the bond up to date is Rs and that the defendant made no payment inspite of repeated demands

The value of the suit is laid at Rs for purposes of determination of jurisdiction and Court fee

The cause of action for this suit arose within the jurisdiction of this Court at village, on day of there put the date of repayment as given in the bond)

The plaintiff accordingly prays —

(a) That a decree be passed for the entire amount of principal and interest against the property mortgaged by the deed annexed hereto

(b) That the defendant be given a period of grace within which he may clear off the dues under the mortgage and that should he fail to make the payment before the period of grace expires, the plaintiff do get possession of the property and the defendant do lose his equity of redemption and that a decree for foreclosure in the above terms be passed in the case

(c) Any other relief which the plaintiff in law and equity is entitled to

Schedule A

Description of the property

Schedule B.

Schedule of accounts

Verification as in plaint No 1

No 10. Written Statement for plaint No 10

The above named defendant states as follows —

1 The plaintiff has no cause of action and hence the suit merits dismissal

2 The value of the property in suit exceeds Rs and consequently this Court has no jurisdiction to try the suit.

3 The property in question was mortgaged for the second time to Mr of village in Dist on the day of of the year according to the terms of which the second mortgagee has been in possession of the property since that date The present suit is therefore not maintainable unless the second mortgagee is made a party

4 The bond in suit was not duly attested and executed.

5 The plaintiff was in possession of the mortgaged property from the date of execution of the bond for a period of 5 years and the defendant contends that the mortgage debt was wholly satisfied out of the usufruct of the property The plaintiff on various pretexts did not return the bond, and brought this suit although he had no dues left under the deed

The defendant accordingly prays that the suit be dismissed with costs

Verification as in plaint No 1

No 11. Hints for drawing up a plaint in a Redemption suit.

A redemption suit can be brought by the mortgagor or by one of the mortgagors (22 Mad 209) or by a lessee of the mortgaged property (29 All 679) or by a sub mortgagee (20 Mad 35) For right to redeem read Sections 60 and 90 of the Transfer of Property Act If the mortgagee be in possession of the property then plaintiff should ask for an account from the defendant and the liability of the plaintiff would be ultimately decided on an

adjustment of accounts. The Court in a redemption suit will direct the plaintiff to pay the sum due to the defendant within a time to be fixed in the decree. On payment of the amount within the time fixed the Court will pass order in the final decree declaring that the mortgage is redeemed and the property be released from the mortgage debt. It must be remembered that a redemption suit cannot be instituted before the due date fixed in the bond—*Prad* the Privy Council case reported in 36 All 195—19 C W N 586. The plaintiff mortgagor should ordinarily in the same suit implead the mortgagee or mortgagees if there be more than one mortgagee of the same property 43 I C 286 (Mad). A contract to clog the equity of redemption may not be enforced—*vers* case 34 All 670 35 M L T 287 P L T 423. In a redemption suit the Court fee has to be paid on the principal sum covered by the bond.

No 11. Plaintiff in a suit for redemption

[Description of the Court etc. as in No 1]

The plaintiff in the above suit states as follows—

1 The plaintiff executed and registered a mortgage deed in respect of a plot of homestead land measuring about on receipt of a loan of Rs. carrying interest at per cent per annum on the day of of the year and agreed to repay the entire sum due as principal and interest on

2 The mortgaged property is situate in village Police station in the district of within the jurisdiction of this Court and is described in *Schedule A*

3 It was subsequently agreed upon between the plaintiff and the defendant that the mortgage debt with interest thereon should be repaid out of the usufruct of another piece of paddy land (described in *Schedule B*) by the defendant's possessing the land for years

4 That according to the agreement mentioned in the foregoing paragraph, the defendant was inducted on the land and continued to be in the use and occupation thereof from to e, for years

5 That as far as the plaintiff's calculation goes, the mortgage debt with interest has been paid off from the usufruct which the plaintiff considers to have been at the rate of Rs per Bigha of land a year and the plaintiff appends hereto a statement of accounts according to his estimate, in *Schedule C*

6 That the plaintiff repeatedly requested the defendant to give him a statement of accounts of the profits made from the mortgaged property but has not had any up to date, nor has the defendant returned to him the mortgage bond. The plaintiff craves leave to file along with this plaint a certified copy of the bond

7 The value of the suit for purposes of determination of jurisdiction and court fee is laid at Rs

8 The cause of action for the present suit arose on [i.e. from the time when according to plaintiff's calculation all dues in respect of the bond debt were paid off from the usufruct]

9 The plaintiff therefore, prays that —

(a) A decree be passed against the defendant for accounts of dues and payments under the bond

(b) A redemption decree be passed in the event of it being found that all dues in respect of the bond have been paid out of the usufruct

(c) A decree for redemption of the mortgaged property on payment of any sum that may be found

due under the bond be passed, and that a time be allowed to the plaintiff to pay off the amount that may be found due to the defendant from plaintiff under the bond and that on the payment of the amount within the time fixed the property be declared released from the mortgage debt

(d) A decree for costs of the litigation

(e) Any other relief to which the plaintiff in law and equity may be entitled

(1) *Schedule A* of mortgage property

(2) *Schedule B* of the land used and occupied by the defendant

(3) *Schedule C* of accounts

Verification as in plaint No 1

VI—There should be also a prayer for return of the title deeds if any deposited with the defendant at the time of the mortgage

No 11 Written statement to plaint No 11

The above named defendant states as follows,—

1 The plaintiff executed a mortgage bond in favour of the defendant on receipt of Rs , but as alleged in the plaint he never put the defendant in possession of the property in suit

2 It is true that there was an agreement that the plaintiff would put the defendant in possession of the property in suit, but the plaintiff on various pretexts did not make over possession. The plaintiff is accordingly liable to pay the entire amount of loan covered by the bond together with interest at the bond rate. Thus the total dues of the defendant from the plaintiff under the bond are Rs , the defendant is willing to give back to the pl

the mortgage bond together with other deeds relating to the mortgage, should the plaintiff be agreeable to pay the sum of Rs

3 The plaintiff being himself in possession of the suit land, the suit is not maintainable in its present form

4 There appears to exist no cause of action against the defendant for the suit and hence the suit does not lie at all

5 The defendant may also add that he is willing to have the dues satisfied from the usufruct of the land in suit should the plaintiff choose to make over possession thereof to the defendant for years

Verification as in plaint No 1

No 12 Hints for drawing up a plaint in a suit for restitution of conjugal rights

A husband can bring a suit against his wife for restitution of conjugal rights. A wife may plead cruelty on the part of the husband as a ground for refusing to remain with him (7 Bom L R 602). A Hindu husband guilty of grave matrimonial offence cannot claim restitution (34 Cal 971). Restitution can be claimed even against a minor wife (28 Cal 37). If the wife denies marriage the plaintiff has to prove marriage in a strict form (36 I C 20 P C 19 C L J 216). A Mahomedan husband may not get restitution unless he has paid prompt dower (35 Bom 396) but the authorities are not unanimous on this point (17 Cal 670). Plaintiff can value the suit at any amount he pleases (28 All 545 F B 34 Cal 352, 31 Mad 89 F B).

There is no limitation for such a suit as the cause of action arises on every occasion there is demand and refusal

No 12 Plaint in a suit for restitution of conjugal rights

The above named plaintiff states as follows —

1 That the defendant is plaintiff's legally married wife

2 That defendant No 2 is the father and defendant No 3 is a brother of defendant No 1 and that the said defendants Nos 2 and 3 taking advantage of the plaintiff's absence from home enticed away defendant No 1 on the day of of the year without the knowledge of the plaintiff

3 That the plaintiff on his return came to know of the above facts of the enticement and illegal removal of his wife, the defendant No 1 in the present case called on the said defendants Nos 2 and 3 and requested them to send her back

4 That the said defendants Nos 2 and 3 paid no heed to the plaintiff's request and drove him away and abused him

5 That by the aforesaid act of the illegal removal and enticement of his wife the defendants Nos 2 and 3 have put an obstacle to the plaintiff's enjoyment of conjugal rights

6 The plaintiff is entitled to have a restitution of conjugal rights over defendant No 1 as she is his legally married wife

7 The cause of action of the present suit arose on village within the jurisdiction of this Court

8 For purposes of jurisdiction and Court fee the suit is valued at Rs and Court fee of Rs is paid

The plaintiff therefore claims —

(a) a decree against defendant Nos 2 and 3 for restoring defendant No 1 to him on a declaration that the said defendant No 1 is his legally married wife according to the Mahomedan Law and for directing defendant No 1

to return to plaintiff's home and live there as plaintiff's wife

(b) a declaration that the defendants Nos 2 and 3 have no right to retain defendant No 1 against the wishes of the plaintiff

(c) Any other relief to which the plaintiff in law and equity is entitled

Verification

No 12 Written Statement to the plaintiff No 12

The above named defendants No 2 and 3 state as follows —

1 The plaintiff is the husband of the defendant No 1

2 The plaintiff ill-treated defendant No 1 and refused to maintain her and hence the said defendant No 1 left the protection of the plaintiff of her free will and came over to the house of the defendants Nos 2 and 3 It is wholly untrue that the defendants Nos 2 and 3 enticed away defendant No 1

3 The plaintiff is a man of questionable morals He has a lady named in his keeping at his house and consequently the defendant No 1 cannot stop with the plaintiff so long as the latter does not mend himself

4 In the above circumstances there is no cause of action for the present suit by the plaintiff against the defendants

The defendants accordingly pray that the suit be dismissed with costs

Verification

No 13 Hints for drawing up a plaint in a Suit by a Mahomedan wife for dissolution of marriage

A Mahomedan husband stands on a distinct footing from other people of the male sex governed by laws other than Mahomedan. He has not to seek the assistance of a Court for dissolving the marriage. It is only when a Mahomedan wife wants to have her marriage with her husband dissolved that there is an occasion for these suits. There are only two grounds on which a Mahomedan wife may claim dissolution. First of these grounds is that the husband was suffering from impotency at the time of the marriage and that this fact was not within the knowledge of the wife then. The wife in these cases does not get a decree for dissolution all at once. It must be proved that the impotency complained of is one of a permanent character. To ascertain the fact time (say a years time) is given to the parties and if the disability does not cure by that time it is then that the marriage is dissolved (2) A. L. J. 811 75 I. C. 502). The second of the grounds on which a Mahomedan wife may claim dissolution is *la an* (imprecation). In this case the wife has to prove that the husband accused her of unchastity and denounced her publicly. The allegation should be made distinctly in the plaint. The wife may also claim dissolution if there be an agreement between her and her husband that the former would be entitled to seek dissolution in the event of a certain event happening e.g. in case the husband would marry a second wife and the like and if that event happens 36 Cal. 23 73 I. C. 1042 3 C. L. J. 49. Of course the condition in a *Kabinnama* giving right to the wife to seek divorce must not be allowed as opposed to public policy. 8 Cal. 32.

No 13 Plaint in a suit by a Mahomedan wife for dissolution of marriage

[Description of Court etc. as in No 1]

The above named plaintiff states as follows -

1 The plaintiff was married to the defendant.

2 That the plaintiff stayed at her father's place for about a couple of months and that during the course of these months her father was negotiating her marriage with one Mr Siddik of Rasulpur, an influential and wealthy Zeminder who offered the plaintiff's father a large sum in the event of a marriage taking place between the said Md Siddik and the plaintiff

3 That the temptation held out to the plaintiff's father is principally responsible for the present case for dissolution of marriage by the plaintiff

4 That the statements made in the plaint regarding cruelty, ill-treatment and other unmanly actions of the defendant towards the plaintiff are wholly false

5 That the plaintiff's father started a criminal case against the defendant purely out of spite, and the written statement filed by the defendant in the said criminal case never contained a word that would point to any dark spot in the plaintiff's character

6 The story of publicly denouncing plaintiff's character in presence of the gentlemen named in the plaint is entirely fanciful, and as far as the defendant has been able to ascertain, the gentlemen named in the plaint are underlings of the said Md Siddik who is helping the plaintiff and her father with men and money to obtain the dissolution of marriage.

In the circumstances stated above the defendant prays that the suit be dismissed with costs

No 14 Hints for drawing up a plaint in a suit for damages against a Railway

The liability of a Railway Company arises according to the terms of the risk note The liability of a State Railway is

to return to plaintiff's home and live there as plaintiff's wife

(b) a declaration that the defendants Nos 2 and 3 have no right to retain defendant No 1 against the wishes of the plaintiff

(c) Any other relief to which the plaintiff in law and equity is entitled

Verification

No 12 Written Statement to the plaint No 12

The above named defendants No 2 and 3 state as follows —

1 The plaintiff is the husband of the defendant No 1

2 The plaintiff illtreated defendant No 1 and refused to maintain her and hence the said defendant No 1 left the protection of the plaintiff of her free will and came over to the house of the defendants Nos 2 and 3 It is wholly untrue that the defendants Nos 2 and 3 enticed away defendant No 1

3 The plaintiff is a man of questionable morals He has a lady named in his keeping at his house and consequently the defendant No 1 cannot stop with the plaintiff so long as the latter does not mend himself

4 In the above circumstances there is no cause of action for the present suit by the plaintiff against the defendants

The defendants accordingly pray that the suit be dismissed with costs

Verification

No 13 Hints for drawing up a plaint in a Suit by a Mahomedan wife for dissolution of marriage.

A Mahomedan husband stands on a distinct footing from other people of the male sex governed by laws other than Mahomedan. He has not to seek the assistance of a Court for dissolving the marriage. It is only when a Mahomedan wife wants to have her marriage with her husband dissolved that there is an occasion for these suits. There are only two grounds on which a Mahomedan wife may claim dissolution. First of these grounds is that the husband was suffering from impotency at the time of the marriage and that this fact was not within the knowledge of the wife then. The wife in these cases does not get a decree for dissolution all at once. It must be proved that the impotency complained of is one of a permanent character. To ascertain the fact time (say a years time) is given to the parties and if the disability does not cure by that time it is then that the marriage is dissolved (21 A L J 811 75 I C 502). The second of the grounds on which a Mahomedan wife may claim dissolution is *la an* (imprecation). In this case the wife has to prove that the husband accused her of unchastity and *denounced* her publicly. The allegation should be made distinctly in the plaint. The wife may also claim dissolution if there be an agreement between her and her husband that the former would be entitled to seek dissolution in the event of a certain event happening e.g. in case the husband would marry a second wife and the like, and if that event happens 36 Cal 23 73 I C 1012 3 C L J 49. Of course the condition in a *Kabinnama* giving right to the wife to seek divorce must not be allowed as opposed to public policy 8 Cal 325.

No 13. Plaint in a suit by a Mahomedan wife for dissolution of marriage

[Description of Court etc as in No 1.]

The above-named plaintiff states as follows : -

- 1 The plaintiff was married to the defendant

on the 15th of April, 1913 and lived with him till the 19th of June, 1919

2 The defendant is a man of loose morals and has a mistress named Nerrunessa Bibi in his keeping This the plaintiff objected to and earned for herself showers of reproaches from the defendant on several occasions This is not all The defendant often used to come home late in the night, badly drunk, and threaten to beat the plaintiff, and as a matter of fact mercilessly beat the plaintiff on the 18th of June, 1919 whereupon the plaintiff informed her father Md Golam Hossain who came and took away the plaintiff to his place

3 The defendant met the plaintiff's father the said Golam Hossain on the 21st September, 1919, with a number of men and threatened to endanger his life in case he did not part with the plaintiff The said Md Hossain however did not yield to the threats of the defendant and filed a petition before the Subdivisional Magistrate of Barrackpore praying for process against the defendant and two other men of his camp for answering to a charge of criminal intimidation The defendant appeared before the said Subdivisional Magistrate on the 23rd September and filed a written statement in which he made positive and dark allegations against the character of the plaintiff accusing her of unchastity principally amongst other offences The plaintiff files along with this plaint a certified copy of the written statement

4 The plaintiff, further, begs to add that besides making the damaging statement in the criminal Court referred to at the close of the last preceding para

of this plaint, the defendant openly and publicly denounced the plaintiff's character on the 12th September, 1919, before Md Ibrahim, Md. Yusuff and Zander Ali, who are neighbours of the defendant and who interceded to effectuate a re-union between the plaintiff and the defendant

5 That the plaintiff has been seriously mortified and her reputation has suffered very greatly on account of the aforesaid accusation of unchastity (*la-an*) levelled against her. The plaintiff is a Mahomedan lady governed by the Sunni Law, and such acts of accusation entitle her to claim a dissolution of her marriage with the defendant

6 The cause of action for the present suit arose on when the defendant publicly denounced the plaintiff as described in para 4

7 The suit is valued at Rs for determination of Court-fee and jurisdiction of the Court

The plaintiff, therefore claims —

- (a) a decree against the defendant dissolving the marriage between the plaintiff and the defendant
- (b) a decree for costs, and other reliefs to which the plaintiff may in law and equity be entitled

Verification

Written statement to plaint No. 13

The above-named defendant states as follows —

1 That the plaintiff is his legally married wife and was taken away by her father to his place on the occasion of his second son's marriage

2 That the plaintiff stayed at her father's place for about a couple of months and that during the course of these months her father was negotiating her marriage with one Mr Siddik of Rasulpur an influential and wealthy Zeminder who offered the plaintiff's father a large sum in the event of a marriage taking place between the said Md Siddik and the plaintiff

3 That the temptation held out to the plaintiff's father is principally responsible for the present case for dissolution of marriage by the plaintiff

4 That the statements made in the plaint regarding cruelty ill treatment and other unmanly actions of the defendant towards the plaintiff are wholly false

5 That the plaintiff's father started a criminal case against the defendant purely out of spite and the written statement filed by the defendant in the said criminal case never contained a word that would point to any dark spot in the plaintiff's character

6 The story of publicly denouncing plaintiff's character in presence of the gentlemen named in the plaint is entirely fanciful and as far as the defendant has been able to ascertain the gentlemen named in the plaint are underlings of the said Md Siddik who is helping the plaintiff and her father with men and money to obtain the dissolution of marriage

In the circumstances stated above the defendant prays that the suit be dismissed with costs

No 14 Hints for drawing up a plaint in a suit for damages against a Railway

The liability of a Railway Company arises according to the terms of the risk note The liability of a State Railway is

governed by the provisions of the Indian Railway Act (Act IX of 1890) whereas liabilities of other Railways not owned or managed by Government and Limited Navigation Companies are governed by the provisions of the Common Carriers Act (Act III of 1865 as amended by Act X of 1899). The liability of Private Companies arises according to the terms of the contract between the assignor and the assignee and also under the provisions of the Common Carriers Act. The case is otherwise with the State Railways. The position of the Company is that of a bailee and in case of loss of or damage to goods sent the consignor has to prove that they were despatched in good condition with proper care and the defendant Company has to prove absence of negligence and carelessness on the part of their employees. The term of the risk note under which the goods were sent is the principal criterion for deciding the question of liability (43 Mad 617). When goods were sent on risk notes in forms A and B at reduced rates the trend of the decisions of all the High Courts had been to absolve the defendant Railway Company from liabilities. But as this caused great hardship to the consignors the forms of the risk notes have quite recently been slightly altered. If the entire packages sent are lost the company becomes unquestionably liable for non delivery.

The Railway as a carrier is not responsible for loss caused by the carelessness of the consignee (58 Indian Case 1000 18 A L J 64). In the case reported in 23 C W N 998, the goods were destroyed by fire in transit and the Company was made liable for damages. In a suit for damages for loss in transit the Company is liable for the direct outcome of its negligence. The Company would not be liable for damage due to acts of God. For liability of a Company for loss of goods on account of an avoidable accident inspite of the utmost precaution that might be taken in a moment of peril, see the Privy Council case reported in 27 C L J 615=23 M L T 376-20 Bom L R 735.

Suit against a Railway Company cannot be brought without service of proper notice. In the case of a State Railway 6 months notice of suit must be given to the Collector or to the Agent (20 C W N 790 and 696 42 All 390). Notice served upon the

Traffic Superintendent was held to be insufficient (24 Cal 206)
For service of notice in cases of Rail ways other than those
managed or owned by the Government see 38 Ind C 502

A suit may be brought against a Railway for unusual delay
in delivering goods on account of which the article sent suffered
great deterioration

It must be remembered that if the number of packages sent
reached the consignee a suit for damage will not lie even if the
contents be found to be short 16 C W N 767 41 Cal 576

Railways will not be liable for loss of gold silver or silken
articles of value more than Rs 100/ be sent without proper
insurance 42 Cal 888

No 14 Suit against a Railway Company for damages for goods sent but not delivered

Description of the Court and the parties as in
plaint No 1

Claim—Rs 200/ re damage for goods not delivered

The above named the plaintiff states as below —

1 The plaintiff sent 240 casks of mustard oil
from Calcutta to Benares Cantt by Railway on the
12th of September, 1924 and received a risk note in
form A or B (Here put in the description of the form
of receipt obtained)

2 On the 29th September 1924 when taking
delivery of the goods sent the plaintiff got 235 casks
instead of 240 despatched and took over the casks
available granting a receipt for them The remain-
ing 5 casks were found missing and accordingly
not delivered to the plaintiff The value of the
aforesaid five casks of mustard oil is Rs 200/-

3 The plaintiff sent a notice claiming Rs 200/-
for the lost casks of mustard oil to the Agent of the
defendant Railway Company and was given to
understand in reply that the said Railway Company

was in no way bound to make good the loss sustained by the plaintiff

4 The cause of action for the present suit arose at Benares Cantt on the 29th of September, 1924

5 The plaintiff values this suit at Rs 200/ for determination of jurisdiction of the Court and for Court fee

The plaintiff therefore prays —

(1) A decree for Rs 200/ with interest and costs
Verification

No 14 Written statement to the plaint No 14

1 The notice with which the plaintiff served the defendant Company was insufficient as that was directed upon the Traffic Manager and not upon the Agent as it should have been under the law

2 The defendant Railway Company offered to deliver to the plaintiff 240 casks of mustard oil as per receipt but the plaintiff declined to accept 5 casks as they did not contain their full capacity The plaintiff signed and filled up A form of risk note which meant that he sent goods at his own risk and he did not willingly accept the five casks in question The defendant company accordingly is not liable for any damage The company further believes that the five casks refused by plaintiff had been in damaged condition at the time of delivery to the Railway for despatch and that their contents were not properly secured

3 The defendant company does not accept the price of the five casks of mustard oil as given by the the plaintiff and the plaintiff must prove that the his price claimed is proper

4 The defendant company twice wrote to the

plaintiff to take delivery of the aforesaid five casks of oil within 7 days from the receipt of the notice, but the plaintiff having refused to do so, the company sold out the casks by auction to the highest bidder for Rs 10 12 As. Out of this amount the Company's dues for demurrage come up to Rs 7/- and the plaintiff, accordingly may take the balance of Rs 3-12 As which still remains in deposit at the defendant company's office at the plaintiff's credit.

The defendant, therefore, prays that—the suit be dismissed with costs.

Verification

No 15 Hints for drawing up a plaint in a contribution suit

Before drawing up a plaint or written statement in a contribution suit sections 69 and 70 of the Indian Contract Act should be read carefully. Generally speaking a suit for a contribution lies when a person who is liable along with others pays up his share of the dues together with those of others, for protecting a common interest. In such a suit the plaintiff should not pray for a joint decree against the defendants. He must distinctly set forth the amount due by each of the defendants (1). Unless the liabilities of the plaintiff and the defendants were joint and several in respect of the sum paid a contribution suit will not lie.

(2) In order to have the right to sue for contribution it is essential for the plaintiff to show that payment was made reasonably and prudently (3). Hence if a person made payments on sentimental social or moral grounds he cannot legitimately claim to be reimbursed (4). It is not in every case in which a man was benefited by another that an obligation to repay arises, there

(1) 12 All 110, 17 I C 45, 21 W. R 255

(2) 61 I C 94

(3) 61 I C 892

(4) 61 I C 706

must be an obligation express or implied (1) Where a tank was filled up in compliance with the requisition of a Municipality and tenants were settled on the land the case was held to be one under sec 70 of the Contract Act (2)

It must be noted that the person making the payment does so out of a reasonable apprehension of his right being affected In a recent Calcutta case a reversioner who made payments for protecting his future rights subsequently sued the widow in whose hands the property was for reimbursement (3) A purchaser at a sale in execution of a mortgage decree or a rent decree when he pays back rent he does so for his convenience and he cannot sue the judgment debtor for contribution in respect of payment made (4) The position of a *darpatnadar* paying decretal amount of the *patni* is quite different He may have possession of the Taluk under sec 171 B T Act and if he so chooses he may recover the amount so paid by a contribution suit (5) The law of contribution has been elaborately discussed in a recent case reported in 30 C W N 366 and it was held that in a suit for contribution—the Court should take broad view of facts and decide according to equitable principles unhampered by technicalities

No 15 Suit for contribution

[Description of the Court and the parties as in plaint No 1]

Claim for contribution of Rs

The plaintiff in the above suit states as follows

1 That a plot of land as described in the Schedule given below was inherited by the plaintiff and the defendant

2 That the said land forms a holding under the Raja of Mahisdal at an annual rental of Rs 50/

(1) 40 Bom 647 21 C W N 394

(2) 25 C W N 813

(3) 18 C W N 779 22 C W N 347

(4) 9 C W N 670 6 C W N 794

(5) 21 C W N 628

3 That the said holding is held in equal shares by the plaintiff and the defendant, and that the defendant is accordingly liable for half the rent of the said *jama*

4 That the land lord brought a suit for arrears of rent and put up the property to sale when the present plaintiff to protect his interest deposited the entire decretal amount of Rs plus cost of the suit

5 That as a result of the payment of Rs as mentioned in para (4) of the plaint the defendant's share in the property was saved, and as the defendant derived benefit from the deposit made by the plaintiff he is bound to pay half of the amount deposited by plaintiff i.e Rs

6 That the plaintiff by the said act of deposit stands in the position of a creditor of the defendant for Rs and is entitled to interest on that sum at the rate of 12 per cent per annum as compensation for detention of his money

7 The suit is valued at Rs for purposes of determination of jurisdiction and court fees

8 The cause of action for the present suit arose on the day of 192— in village P S within the jurisdiction of this court

The plaintiff accordingly prays —

(a) That the suit be decreed with costs and interest at the rate of 12 per cent per annum as per account given below

(b) Any other relief to which the plaintiff may be found entitled in law and equity

Schedule A (Description of property)

Schedule B (Statement of Accounts)

Verification

The defendant states as follows:—

1. The plaintiff has no cause of action against the defendant.

2. The defendant paid Rs. . . to the plaintiff on . . . for payment of the defendant's quota of the rent which the plaintiff deposited in Court along with his share of the dues

3. That the present suit is entirely false and speculative, and appears to have been instituted out of a grudge which the plaintiff bore towards the defendant for carrying a catch of 3 mds of fish from an *eymali* tank which the plaintiff claims for himself exclusively.

The defendant accordingly prays that the suit be dismissed with costs.

Verification

Nos 16 and 17 Hints for drawing up a plaint in suits for damages for crops, trees, fish etc taken

If the plaintiff be dispossessed from the land by the defendant who is taking crops etc—his remedy will lie in a regular title suit for recovery of possession of the land and also for damages. But if the plaintiff remains in possession of the land he may sue for damages only. As in the latter case the defendant's acts amount to theft the suit will not be triable in a Small Cause Court [Vide

article 35 cl (ii) of Sch II of the Provincial Small Causes Court Act 127 C L J 228 19 C W N 872 23 C W N 135 (notes)]

If the defendant be a tenant of the land and cut and appropriate trees from the land, the suit may be tried in an S C Court. But the authorities are not uniform on the point.

If the tenant had cut trees for his use, he is liable for damages unless the trees are useless ones (that is *Agacha*) (Vide 10 C L J and 25 C L J 218). A suit against a tenant for damages must

be brought within two years (Vide Art 36 of the Indian Limitation Act). But if the suit be against a trespasser the ordinary law of limitation of 3 years will apply. If a co-sharer land

lord had appropriated trees from a joint land without keeping a sufficient number of trees for the plaintiff the latter can bring a

damage suit against his co-sharer (Vide 15 C L J 225) If there be trees on the lands sufficient for the plaintiff's share a suit for damages will not lie Unless a co sharer's possession constitutes complete ouster of another co sharer the latter cannot bring a damage suit against the former 23 C W N 900 29 C L J 504 Instead of a suit for damages a suit for joint possession or partition may be instituted 23 C W N 900 and also 20 C W N 1258

No 16 Suit against a tenant for cutting and appropriating a tree from a holding

Description of the Court and the parties as in
plaint No 1

1 That the defendant is a tenant at will of the plaintiff in respect of a plot of land measuring about one acre and 60 sq feet described in Schedule A and situate within the jurisdiction of this Court in Village Bolepore, Police Station Jhardanga at an annual rental of Rs 15/-

2 That there were several fruit trees on the said plot of land which according to the terms of the lease, the defendant was to keep as they were

3 That on or about the 15th of March, 1923 the defendant felled one of the mango trees standing on the plot of land, and that he had clearly no right to do so, and that the defendant by this act has caused plaintiff a loss amounting to Rs 25/-, and that the defendant thus made himself liable for damage to the extent of Rs 25/-

4 The cause of action of the present suit arose, under the above circumstances, on the 15th March, 1925, i e, on the day the mango tree was felled, in the village of Bolepore, which is within the jurisdiction of this Court

5 That the plaintiff values the relief at Rs 25/- for purposes of valuation of the suit and determination of jurisdiction of the Court

The plaintiff accordingly prays —

(a) That a decree for Rs. 25/-, which is the price of the tree, with costs, be passed against the defendant

(b) Any amount to which in equity and law the plaintiff may be deemed entitled for damage with costs thereon

Schedule of property

Verification

Written statement to plaint No 16

1 That the defendant and his predecessors-in-interest have been holding the aforesaid plot of land, along with another plot measuring about one and a half acre, for a period of above 30 years, at a fixed rent of Rs 15/- per annum, under a permanent lease granted by the father of the plaintiff

2 That the defendant's rights being one of a permanent lessee, he is entitled to cut and appropriate all trees standing on the land as of right, and that the plaintiff accordingly has no cause of action for the present suit

3. That the tree in question, which is the subject matter of the present suit, was planted by the defendant's father, and that the defendant who succeeded his father on the latter's demise in 1925 had been enjoying the fruits thereof up to quite recently, when the tree having dried up was felled by the defendant and used as fuel. The plaintiff, therefore, has no cause of action for the present suit,

4 The value of the suit, under the circumstances mentioned in para 3, will be about Rs 2/- The claim of the plaintiff is thus excessive and exaggerated.

5 The present suit appears to have been started falsely against the defendant out of a grudge which the plaintiff bore him on account of a recent, but unsuccessful, attempt to exact enhanced rent for the aforesaid plots of land

Verification

No 17 Suit for damages for crops taken

Descriptions of the Court and the parties as in
plaint No 1

The above named plaintiff states as follows —

1 That the plaintiff has been in possession of a plot of land measuring about 2 acres under Mr P N Chanda, as an occupancy raiyat for over 15 years

2 The plaintiff sowed paddy on the said plot of land in May, 1920 and when the harvest time came, the defendant wrongfully and forcibly entered upon the land with 5 or 6 labourers on the 15th of November, 1925 and carried away the crops standing thereon

3 The defendant had no colour of right to take away the paddy sown by the plaintiff and consequently the plaintiff has been put to great loss by the said illegal removal of crops by the defendant

4 The approximate value of the paddy and straw that stood on the aforesaid plot of land would be about Rs , the average yield of paddy and straw per acre being Rs

5 The aforesaid plot of land is situate in village Monirampore P S Barrackpore, within the jurisdiction of this Court and a full description of the same is given in *Schedule A* annexed hereto

6 The cause of action for the present suit arose on the 15th Nov 1925, i.e. the date on which the paddy was cut and removed from the land in question

The suit is valued at Rs for purposes of determination of jurisdiction and Court fee

The plaintiff accordingly prays that —

(a) A decree be passed for the sum of Rs as per account appended hereto together with interest at 6 per cent per annum thereon from the date when the cause of action arose till the realisation

(b) Any other relief to which the plaintiff may be entitled in law and equity

Schedule (A) (Description of property)

Boundaries

North,	South	East,	West
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Schedule (B)

15 maunds of paddy per acre being the average produce of land the total produce of two acres would be 30 maunds

@ Rs 3 per maund	= Rs 90
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Price of 4 <i>lahans</i> of straw at Rs 5/ per <i>lahan</i>	Rs 20
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Total Rs 110/

Verification

Written statement to plaint No 17

The defendant in the above case states as follows —

1 The plaintiff has no cause of action The property as described in *Schedule A* of the plaint has been in use and occupation of the defendant since his father's time The plaintiff having never possessed the land within 12 years before suit, he can have no title to or interest in the land

2 The plaintiff having neither title to nor possession of the land for over 12 years the suit is not

5 The present suit appears to have been started falsely against the defendant out of a grudge which the plaintiff bore him on account of a recent but unsuccessful attempt to exact enhanced rent for the aforesaid plots of land

Verification

No 17 Suit for damages for crops taken

Descriptions of the Court and the parties as in
plaint No 1

The above named plaintiff states as follows —

1 That the plaintiff has been in possession of a plot of land measuring about 2 acres, under Mr P.N Chanda, as an occupancy raiyat for over 15 years

2 The plaintiff sowed paddy on the said plot of land in May, 1920 and when the harvest time came, the defendant wrongfully and forcibly entered upon the land with 5 or 6 labourers on the 15th of November, 1925 and carried away the crops standing thereon

3 The defendant had no colour of right to take away the paddy sown by the plaintiff and consequently the plaintiff has been put to great loss by the said illegal removal of crops by the defendant

4 The approximate value of the paddy and straw that stood on the aforesaid plot of land would be about Rs , the average yield of paddy and straw per acre being Rs

5 The aforesaid plot of land is situate in village Monirampore P 8 Barrackpore, within the jurisdiction of this Court and a full description of the same is given in *Schedule A* annexed hereto

6 The cause of action for the present suit arose on the 15th Nov 1925 i.e the date on which the paddy was cut and removed from the land in question

The suit is valued at Rs for purposes of determination of jurisdiction and Court fee

The plaintiff accordingly prays that —

(a) A decree be passed for the sum of Rs as per account appended hereto, together with interest at 6 per cent per annum thereon from the date when the cause of action arose till the realisation

(b) Any other relief to which the plaintiff may be entitled in law and equity

Schedule (A) (Description of property)

Boundaries

North,	South	East,	West
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Schedule (B)

15 maunds of paddy per acre being the average produce of land the total produce of two acres would be 30 maunds

@ Rs 3 per maund	= Rs 90
------------------	---------

Price of 4 *lahans* of straw at Rs 5/- per

<i>lahan</i>	= Rs 20
--------------	---------

Total Rs 110/-

Verification

Written statement to plaint No 17

The defendant in the above case states as follows —

1 The plaintiff has no cause of action The property as described in *Schedule A* of the plaint has been in use and occupation of the defendant since his father's time The plaintiff having never possessed the land within 12 years before suit, he can have no title to or interest in the land

2 The plaintiff having neither title to nor possession of the land for over 12 years the suit is not

maintainable in its present form. The property in suit has been in the joint possession of the defendant and his brother who therefore, is a necessary party to the suit. The present suit is thus bad for non-joinder of parties.

3 The allegation that paddy was cultivated by the plaintiff on the plot of land in the year 1925 as set forth in the plaint, is wholly untrue. It was the defendant and his brother who cultivated the land at their cost.

4 The produce of land for the year 1925, i.e. for the period in suit, was 2 Mds of paddy per acre and the price of paddy and straw ruling at that time was Rs 2/- per maund of paddy and Rs 5/ per *lahan* of straw. The claim of the plaintiff, accordingly is excessive.

5 The defendant, therefore prays that the suit be dismissed with costs. [Verification]

No 17 (a) Damage suit for fish unlawfully taken by defendant from plaintiff's tank

Descriptions of the Court and the parties as in plaint No 1

The plaintiff in the above suit states as follows —

1 The plaintiff is the elder brother of the defendant, separate in mess from him. In a partition suit between the present plaintiff and the defendant decided in the year 1312 B S, the tank, as described in the *Schedule* annexed hereto, fell to the plaintiff's share and the plaintiff has been in exclusive possession of the same since that time.

2 That the defendant unlawfully took away a catch of 2 Mds of fish from the aforesaid tank on the 14th of Jaistha, 1316 B S.

3 That as price of the above quantity of fish the plaintiff is entitled to claim, and does claim, Rs 40/-.

4 The cause of action for the present suit arose on the 14th of Jaistha, 1316 in village .which is within the jurisdiction of this Court

The plaintiff accordingly prays —

(a) A decree for Rs 40/ with costs against the defendant

(f) Any other relief that the plaintiff in law and equity may be entitled to

Schedule of the Property

A tank situate in Mouja Thana with boundaries given as under —

North	South	East	West
M Chatterjee's D C Mitter's Plaintiff's			Defendant's
Garden	Lane	Garden	homestead
[Verification]			

Written statement to plaint No 17 (a)

1 The plaintiff has no cause of action against the defendant

2 The property in suit belongs to the plaintiff and defendant jointly, and was not allotted to the plaintiff's share exclusively as alleged by him

3 The defendant's catch on the 14th of Jaistha, 1316 was about 10 seers, and not two maunds, as alleged by the plaintiff, and that as there is enough fish yet left in the tank in dispute, the defendant sees no bar to the plaintiff's carrying a catch of equal quantity

4 The price of fish as given by the plaintiff is excessive

5 The suit is not maintainable in its present form

The defendant, accordingly, prays that the suit be dismissed with costs

Verification

Nos 18 and 19 Hints for drawing up a plaint in a suit for account

If the agent be alive the suit will be an ordinary account suit for calling upon the defendant to render accounts for the period during which he had meddled with the plaintiff's money and property. But where the original agent is dead his representative has to be sued. In such a case the defendant cannot be called upon to render accounts but the plaintiff has to ascertain the specific sums under different heads recoverable from the defendant and the plaintiff should pray in the plaint for a decree for the said specific sum (Vide 25 C W N 356 17 O W N 5) [but some of the Judges have also taken a different view 16 C L J 283]. When an heir of a deceased *Gomastha* or agent is sued his liability is limited to the value of the assets he has inherited from the deceased agent. An agent will be liable for the amount which became time barred on account of his laches. For the liability to account of the heir of a deceased partner who was manager of the business—read f I C 63.

When rendering of account is not prayed for, but a suit is brought for a specified sum the suit does not become an account suit proper though the Court may have to examine accounts for coming to a finding in such a case 4 P L W 70 27 C L J, 96 43 I C 755. In an account suit preliminary decree is passed at the outset and a Commissioner is appointed to examine the account. A final decree is subsequently passed after submission of Commissioner's report on hearing such objections as may be raised by the parties. A party aggrieved by the preliminary decree must prefer an appeal against that decree (39 Bom 339 F B 23 All 152) and should not wait for final decree.

In a partnership business where both the plaintiff and the defendant handled money, the Court may pass orders on both the plaintiff and the defendant to render accounts of sums spent by them. The defendant should set forth the plaintiff's liability to render accounts in the written statement filed, 40 All 446.

As to the procedure to be followed in an account suit read 12 C W N 28. An ordinary account suit should be brought

within 3 years from the time when the defendant left plaintiff's service or became liable to render accounts in any way (Vide 43 Cal 245) but where there is a contract that the agent would render accounts annually the agent cannot be made liable for accounts for a period of more than three years prior to the institution of the suit (11 C L J 43 30 C L J 90) Where the agent hypothecated property as a security for rendering accounts the period of limitation would be 12 years (Vide 4th Cal 245 12 C L J 35)

Suit for accounts from an agent

[Description of the Court and the parties as in plaint No 1]

The above named plaintiff states as follows —

1 The defendant served under the plaintiff, as his agent for collection of rent and money due to the plaintiff's estate, from the 7th day of Aashar 1316 to the 18th of Magh 1318, and left the plaintiff's service all on a sudden on without rendering any account of money realised by him

2 That the defendant has not submitted his account papers though called upon

3 The plaintiff, so far as he has been able to ascertain, understands that the sum of Rs is due from the defendant and that it would cost him Rs to get his account papers duly prepared

4 The cause of action for this suit arose at within the jurisdiction of this Court on (the day on which the defendant left the plaintiff's service without rendering any account)

5 As para 5 of, plaint No 1.

The plaintiff prays judgment —

(a) For calling upon the defendant to submit all account papers and in default Rs as costs for preparation of the same

(b) For the amount that may be found due from the defendant on adjustment of accounts by a Commissioner appointed by Court

(c) For costs of the case

6 That liberty be reserved to the plaintiff to pay Court fees on the amount that may be found due from the defendant in excess of the amount claimed at present

Verification

No 18 Written statement for plaint No 18

[As in No 1]

The defendant ect

1 That the suit is barred by limitation as the defendant left plaintiff's service on that is more than 3 years before the institution of this suit

2 That the defendant while in plaintiff's service rendered true accounts of all sums realised by him and properly submitted his accounts to the plaintiff's head office and that the defendant got receipts for the amounts sent by him to the plaintiff's manager and the said receipts are filed herewith

3 That the plaintiff has no cause of action for this suit

4 That

Verification

Plaint No 19 in a Suit for accounts

Descriptions of the Court and the parties as in plaint No 1

The plaintiff in the above suit states as follows —

1 The plaintiff is the Zemindar of *malal* bearing Collectorate Touji No Police Station within the jurisdiction of this Court

2 The defendant was appointed as the *Gomostha* of the above *malal* on execution of a security bond

in favour of the plaintiff on the day of in
the year

3. According to the terms of the said security bond, the defendant was bound to submit accounts and collection papers etc of rents realised from the *mahal* at the close of every agricultural year together with the gross collection for the year at the *Sadar Iachari* of the plaintiff

4 The defendant continued collections of rents etc of the *mahal* from to and submitted accounts of collection etc up to of year He, however, has not submitted any accounts or papers relating to collection of rents etc for the years , nor has he made payments to the *Iachari* As a result of the conduct he earned for himself a dismissal on of the year

5 As far as the plaintiff has been able to ascertain, his approximate dues from the said *Gomas tha*, who is the defendant in the suit would be Rs Apart from that, the plaintiff is entitled to get from the defendant all papers connected with the collection of rent etc and should he fail to make over to the plaintiff those papers and books of accounts is bound to make good all reasonable expenses that the plaintiff may have to incur in preparing his books of account and other connected papers relating to collection of rent etc of the *mahal* up to date

6 The suit is valued at Rs for fixing the jurisdiction of the Court and Court-fee

7 The cause of action for the present suit arose at where the defendant resides and on the when the defendant refused to submit accounts and make payments etc after demand by plaintiff for same

(b) For the amount that may be found due from the defendant on adjustment of accounts by a Commissioner appointed by Court

(c) For costs of the case

6 That liberty be reserved to the plaintiff to pay Court fees on the amount that may be found due from the defendant in excess of the amount claimed at present

Verification

No 18 Written statement for plaint No 18

[As in No 1]

The defendant ect

1 That the suit is barred by limitation as the defendant left plaintiff's service on that is more than 3 years before the institution of this suit

2 That the defendant while in plaintiff's service rendered true accounts of all sums realised by him and properly submitted his accounts to the plaintiff's head office and that the defendant got receipts for the amounts sent by him to the plaintiff's manager and the said receipts are filed herewith

3 That the plaintiff has no cause of action for this suit

4 That

Verification

Plaint No 19 in a Suit for accounts

Descriptions of the Court and the parties as in plaint No 1

The plaintiff in the above suit states as follows —

1 The plaintiff is the Zemindar of *mahal* bearing Collectorate Touji No Police Station within the jurisdiction of this Court

2 The defendant was appointed as the *Gomostha* of the above *mahal* on execution of a security bond

in favour of the plaintiff on the day of in
the year

3. According to the terms of the said security bond, the defendant was bound to submit accounts and collection papers etc of rents realised from the *mahal* at the close of every agricultural year together with the gross collection for the year at the *Sadar* *la hant* of the plaintiff

4 The defendant continued collections of rents etc of the *mahal* from to and submitted accounts of collection etc up to of year He however, has not submitted any accounts or papers relating to collection of rents etc for the years , nor has he made payments to the *la hant* As a result of the conduct he earned for himself a *dismissal* on of the year

5 As far as the plaintiff has been able to ascertain his approximate dues from the said *Gomas* *lla* who is the defendant in the suit would be Rs Apart from that the plaintiff is entitled to get from the defendant all papers connected with the collection of rent etc and should he fail to make over to the plaintiff those papers and books of accounts is bound to make good all reasonable expenses that the plaintiff may have to incur in preparing his books of account and other connected papers relating to collection of rent etc of the *mahal* up to date

6 The suit is valued at Rs for fixing the jurisdiction of the Court and Court-fee

7 The cause of action for the present suit arose at where the defendant resides and on the when the defendant refused to submit accounts and make payments etc after demand by plaintiff for same

The plaintiff therefore prays —

(a) That a decree be passed against the defendant for accounts and collection papers etc. from the year to

(b) That should the defendant fail to furnish the papers etc claimed in para (a) of the prayer, a decree for all legitimate costs of preparing those papers and accounts

(c) That a decree be passed against the defendant for statement of all collections made from the tenants of the *mahal* from the years to

(d) That a Commissioner be appointed for preparation of accounts and determination of the plaintiff's dues from the defendant and that a decree be passed for the amount that may be found due on the Commissioner's report

(e) That should the amount found due by the Commissioner exceed that herein mentioned by the plaintiff an order be passed upon the plaintiff for furnishing deficit Court fee for the excess amount

(f) That all costs of the litigation be awarded to him

(g) That he be given any other relief that law and equity may allow

Verification as in Plaintiff No 1

Written statement for plaintiff No 19

The above named defendant states as follows —

1 The plaintiff has no cause of action against the defendant

2. The defendant left the plaintiff's service in May, 1908, and consequently the suit is barred by limitation

3 That according to the prevailing custom in the plaintiff's office, the defendant all along submitted accounts and made payments to Babu the Sadar Naib of the plaintiff on the 1st of Baisak every year. The defendant also sent all account books and collection papers etc that were with him to the said Sadar Naib, Babu on the through the *Daruan* of the plaintiff. The real fact is that the defendant had not been pulling on well with the Sadar Naib at whose instance the plaintiff appears to have brought this false case.

4 The defendant may, besides add that he had dues amounting to Rs from the plaintiff on account of his pay the defendant refrained from bringing a suit against the plaintiff for the amount of his dues for pay, as he depended upon a promise of the plaintiff, who is a respectable gentleman, to pay off gradually.

5 The plaintiff can claim nothing and that the suit should be dismissed.

Verification

No 20 Hints for drawing up a plaint in a partition suit

A partition suit has generally for its object the division of a certain property or properties held by joint tenants or tenants in common. Hence a claim for partition is a matter of right. It is therefore no defence to a partition suit to say that some of the defendants will be materially inconvenienced in the event of a partition. It will be an equally unavailing plea to allege by way of defence that the value of the property which is the subject matter of partition will diminish. 64 I C 948, 20 All L J 90. As a general rule all properties held in co tenancy should be included in a partition suit. In other words as has been put by Mukherjee J in the case reported in 37 C L J 191, a partition suit should em-

This is Calcutta High Court view (1) But it is open to one of the co sharers to bring a suit under sec 9 of Specific Relief Act against the other co sharers in the event of his being dispossessed (2)

A suit under this section does not lie if the plaintiff has already failed in a proceeding under sec 145 of the Criminal Pro Code inasmuch as the party to whom the Magistrate gives possession under sec 145 Cr P C has been put upon the land in due course of law (3)

An order passed in execution of a decree in a sec 9 case is non appealable (4) But there can be rehearing under order IX r 9 although not review (5)

It is possession alone and not title that is material in a sec 9 case and consequently it has been held that prior peaceful possession is enough title against a trespasser (6) An unsuccessful plaintiff in a sec 9 case may institute a suit for declaration of title and injunction restraining the execution of that decree (7)

A suit for mesne profits ca not be joined with a suit under sec 9 (8)

No 21 Suit under sec 9 of Indian Specific Relief Act

(Description of the Court and the parties as in plaint No 1)

The above named plaintiff states as follows —

1. That the land described in the *Schedule* to the plaint situate in village *Roypore*, thana *Alipore*, within the jurisdiction of this Court is plaintiff's

(1) 19 C W N 120

(2) 19 C W N 1117

(3) 30 All 331 12 C W N 695 22 C W N 931, 43 I C 193

(4) 68 I C 76

(5) 4 Mad 217

(6) 67 I C 941 30 Cal 23

(7) 61 I C 490

(8) 28 I C 1

ancestral rent free land and that the plaintiff's father possessed the said land for a period of over 12 years, and that from the time of his father's death in June 1910 plaintiff was in peaceful possession of the said land by actual cultivation

2 That on the 15th July 1927 defendant forcibly dispossessed plaintiff from the said land by actually ploughing it inspite of protest from the plaintiff's servant

3 For purposes of Court fees and jurisdiction the suit is valued at Rs. 2000/ [Half Court fee is payable in a suit of this nature]

4 That the cause of action of the suit has arisen on the date of dispossession in village within the jurisdiction of this Court

So the plaintiff prays —

(a) That the Court may be pleased to hold plaintiff's possession of the land within 6 months of this suit and grant him a decree for the recovery and possession of the property in suit

(b) That a decree be passed for the cost of the suit

Be it here stated that plaintiff reserves his right to sue defendant for mesne profits in a subsequent suit

Schedule of the land in suit

Verification

Written statement No 21 for plaint No 21

[The description of the Court etc as in No 1]

The defendant states as follows —

1 That the plaintiff has no cause of action for this suit

2 That the suit is barred by limitation in as much as the plaintiff or his alleged predecessor-in-interest possessed the disputed land and as the plaintiff was not in possession of the land within 6 months before suit

3 That the defendant purchased the land from one Harihar Prosad of Joypore on the 9th of June, 1897, by a registered kobala and has been in possession of the property for a period of much over 12 years through his tenant one Sibanandan Shaw

4 That the defendant's aforesaid tenant Sibanandan Shaw who is in possession of the land is a necessary party to the suit and that the suit cannot proceed in his absence

5 That the plaintiff's allegations of possession and dispossession as set forth in the plaint are absolutely false and that defendant never dispossessed plaintiff from the said land as alleged

6 Defendant prays that the suit may be dismissed with costs

[Verification]

No 22 Hints for drawing up plaint in an ejectment suit

Ejectment suit under the Transfer of Property Act is brought after service of notice under sec 106 of the said Act. The form of notice has been given in a subsequent chapter in Part VII. This notice may be served either by post (4 C W N 372) or personally. If the tenancy is one from month to month a notice of clear 15 days ending with the month is necessary. If however the lease be for agricultural or manufacturing purposes a notice of 6 months ending with the year is needed. In an ejectment suit proper service of notice is a condition precedent and it is always a good defence to say that the notice was not served or was insufficient. If notice sent by registered post be refused ignore

ence of its contents is no valid defence (17 C W N 1073 15 Cal 681) When notice was sent by registered post but not returned to the sender a presumption arises that it reached the addressee (C C L J 251) In the recent Privy Council Case (*Hari Har Banerjee vs Ramasami Poy* 23 C W N 7) (1918) their Lordships of the Privy Council discussed the question of service of notice at great length It was held (i) that a notice to quit should be tendered or delivered either to the party or to one of the members of his family or to a servant or affixed to some conspicuous part of the property (ii) that in case of a joint tenancy, service of notice on one tenant is *prima facie* evidence of service of notice on all (iii) that if the letter containing the notice is properly addressed and posted the presumption is that it reached the addressee and the presumption is much stronger in cases of registered letters It does not matter if the addressee signed the receipt or some body else signed for him In cases of holding over after the term of an expired lease in respect of homestead land in a town the tenant is entitled not to six months notice but only to a reasonable notice If the period of notice was fixed by agreement defendant should get notice for that period 23 C W N 596

A tenant is not entitled to compensation on eviction 27 Mad 211 But he can remove the structure that was raised by him on the land 38 Mad 710

If the tenant denied landlord's title in another suit or in some other way the tenancy may be determined immediately or on service of notice on that ground If the tenant was inducted on to the land by the plaintiff he has no right to deny plaintiff's title till he has made over possession (37 All 557 P C)

A tenant in an ejectment suit may claim permanent right in the land or may deny plaintiff's title He may as well deny service of notice or question its sufficiency From long possession and pucca structure on the land and uniform payment of rent permanency of tenancy may be inferred (16 C W N 567, 29 C W N 139)

Court Fee—In an ejectment suit Court-fee is payable on one year's rent

See Court Fees Act, Sec 7 cl XI (cc)

No 22 Ejectment suit

[Description of the Court and parties as in No 1]

The above named plaintiff states as follows —

1 The defendant was the plaintiff's monthly tenant of the house situate at which is specifically described in the Schedule annexed hereunto

2 The plaintiff on 15th day of January 1912 served on the defendant a notice to quit the said house on the 1st day of February 1912 but the defendant did not quit the house as desired

3 The plaintiff is entitled to get compensation at the rate of per day from the defendant for his use and occupation of the house after the 1st day of February 1912 and so the plaintiff claims Rs as damage from the defendant

4 The cause of action for this suit arose at within the jurisdiction of this Court on the 1st of February 1912

5 Value of the suit for purpose of jurisdiction is Rs , and the value for purpose of Court fee is Rs (one year's rent plus the amount claimed as damage)

The plaintiff prays judgment—

(1) For possession of the house in suit by ejecting the defendant

(2) For Rs as damage

(3) For costs of the case

(4) For such other relief as the nature of the case may require (Schedule and description of the property)

[Verification as in plaint No 1]

No 22. Written statement for plaint No. 22.

[As in No. 1]

The defendant, etc

1 That the plaintiff did not serve any notice to quit on the defendant as alleged

2. That the suit cannot proceed without due service of notice on the defendant, and that the plaintiff's alleged notice is legally insufficient

3 The defendant has permanent right in the land as he is holding it for a very long time at a uniform rent and he constructed substantial building on the land to the plaintiff's knowledge.

That the suit be dismissed with costs

Verification

No 23 Hints for drawing up a plaint in a suit for dissolution of partnership.

Sec 253 of the Indian Contract Act should be read carefully along with other relevant sections before drawing up a plaint or a written statement in a suit for dissolution of partnership. It should be clearly set forth in the plaint as to how or why the partnership came to be dissolved. Plaintiff in these suits may claim accounts. If the partnership is dissolved pursuant to a written agreement, registered or otherwise, reference should be made in the plaint about it. In the absence, however, of any such written agreement the question of dissolution of partnership becomes a matter for inference and the plaint should generally contain allegations or recitals of circumstances which would inferentially point to a clear intention to dissolve. Thus it was held by Mukherjee and Walmsley J. J in *Hara Mohan vs Sudarsan Poldar* 25 C W. N. 847 at page 850, that cl. (7) of sec. 253 of the Indian Contract Act which provides that if any member of the partnership ceases to be so, the partnership

dissolves as between others is subject to the qualification viz 'In the absence of a contract to the contrary The question whether there has been abandonment by a partner is a matter of inference to be drawn from the facts of each case Consequently refusal by a partner to supply capital when demand is made is not conclusive proof of intention to retire within the meaning of cl (8) of sec 253 of the Indian Contract Act (1)

While dealing with a minor who has stepped into the shoes of his deceased father it should be borne in mind that he can be made liable for the personal liabilities of his father at the time of his death only to the extent of the assets inherited by him A minor who is admitted to the benefits of partnership cannot be made personally liable for any obligation of the firm (2)

As to the liability of a minor partner on attainment of majority—read sec 248 of the Indian Contract Act

The Court may direct that the partnership business be dissolved and accounts be taken by a Commissioner appointed by the Court The decree may direct that such of the partners who handled money of the business will render accounts If necessary, a Receiver may be appointed for management of the business during the pendency of the suit

Limitation in these suits is governed by Art 106 of the Limitation Act and the suit must be instituted within three years from the date of dissolution The question of limitation cannot arise so long as the partnership continues The starting point of limitation is really, therefore the date on which the business was dissolved or discontinued (3) When a partnership business comes to a close the proper course for settlement of dispute among different partners is not by a suit by one partner against another for the money he has received but by a suit for dissolution of partnership and for accounts (4)

(1) I L R 28 Cal 53 L R 27 J A 189 I L R 25 Mad 149, 164

(2) I L R 42 Cal 225

(3) Noyess vs Crawley 10 Ch D 31

(4) 17 C W N 353

**No 23 Suit for dissolution of partnership
 business**

[Descriptions of Court and parties as in plaint No. 1]

The above named plaintiff states as follows —

1 That the plaintiff and the defendant have
been for years and months past carrying
on a joint business under a registered agreement
of partnership executed between the parties on the
day of of

2 Several disputes and differences have arisen between the plaintiff and the defendant as partners whereby it has become impossible to carry on the business in partnership with advantage to the parties

3 That the defendant has also committed breaches of the partnership agreement by misappropriating money of the business and by not rendering its true account

4 That the cause of action for this suit arose at (the place where the business is carried on) on (day on which the defendant first committed the breach of agreement) and on other dates

5 As para 5 of plaint No 1

The plaintiff prays —

(1) That a decree be passed for dissolution of the partnership business

(2) That accounts be taken and decree for the amount due to the plaintiff with costs be passed against the defendant

(3) That a Receiver be appointed for management of the business and for collection of money due to the said business during the pendency of the suit.

[Verification as in plaint No 1]'

No 23 Written statement for plaint No 23**{ As in No 1 }**

The defendant etc

1 That the defendant has not committed any breach of the partnership agreement and that he has not misappropriated any money of the partnership business

2 That the plaintiff used to keep accounts of the business and that the defendant used to purchase goods at and that as such the plaintiff is liable to render accounts of the business

3 That as the plaintiff began to take undue advantage by (state what happened) the defendant requested him to render proper accounts of the business but he declined to render any accounts and has fraudulently brought this suit on entirely false allegations

4 That

Verification

No 24 Hints for drawing up a plaint in a title suit.

In the plaint a clear mention should be made as to how the plaintiff derived title to the property in suit. If the plaintiff acquired the property himself then state how and from whom the property was acquired and also mention the nature of the title the plaintiff's vendors had in the property. If the property be the plaintiff's ancestral property—then the said fact should be noted in the plaint and an attempt should be made to trace out how and when the property was acquired by plaintiff's predecessor in interest. In a case when the plaintiff acquired the property of a remote relation a genealogical table should be annexed to the plaint showing through whom plaintiff got the property. If rent be payable for the land the name of the superior land lord to whom rent is payable should be mentioned. If there were Settlement operations in the locality the Settlement Dag number of the land should also find place in the plaint. If the

property appertains to any particular *Touza* of a Collectorate then that fact should also be stated in the plaint and in the event of the defendant's denying the plaintiff's title, plaintiff will have to apply—for a commission for local investigation for relaying the disputed property with reference to the Revenue Survey map or any other map of the Collectorate (copies of which can be had from the Collector's office). If the land be rent free, the said fact should be stated in the plaint. In fact all the particulars necessary to show plaintiff's title to the property should be set forth in the plaint. The plaintiff cannot succeed by proving only his title, because if he was out of possession for more than twelve years before the suit his title however good at the inception, may be of no avail to him and the suit may be defeated on the ground of limitation. So the plaintiff will have to state in the plaint the mode of possession he or his predecessor-in interest exercised over the property when the plaintiff was dispossessed by the defendant. If the plaintiff be a co-sharer in the property and is in joint possession of other immovable property with the defendant, limitation may not stand in the way as there can not be adverse possession in such a case as against a co-sharer. [Read article 142 and 144 of the Indian Limitation Act.]

As against the rightful owner nothing will affect his title unless the owner be actually ousted 18 C L J 274. For dispossession of joint-family property by a co-sharer, read 27 Mad 192. Symbolical possession taken by defendant does not affect the plaintiff's title—42 C L J 192, 25 Bom 275. The plaintiff may rest content with proving his title in the first instance and it will be for the defendant to shew that he had kept the plaintiff out of possession for more than 12 years, 14 Bom 458, 3 All L J. 363 P C. 4 Bom L R 400. The plaintiff in a title suit may also claim decree for *mesne profits* for three years prior to the institution of the suit and up to the date of actual recovery of possession through court.

No. 24. Title suit for recovery of property and *mesne profits*.

[Descriptions of the Courts and parties as in
plaint No. 1]

1 That the plaintiff's father Mr _____ of _____ was the absolute owner of the estate called _____ situate in the district of _____ the Government Revenue of which is Rs _____. The said property is specifically described in the *Schedule* annexed hereunto

2 That on the _____ day of _____ 19 _____ this defendant illegally dispossessed the plaintiff's father by collecting rent from the tenants and by taking possession of the *Kachari* House

3 That the plaintiff's father died intestate leaving the plaintiff as his sole heir

4 That the defendant is still withholding possession of the estate from the plaintiff and he is entitled to get Rs _____ as *mesne* profits from the defendant for the period of dispossession (*i.e.* for 3 years before suit if the dispossession took place more than three years ago)

5 That the cause of action for this suit arose at _____ [where the property is situate within the jurisdiction of this Court on _____ (the day of dispossession)]

6 The plaintiff values the suit at Rs _____ for the purpose of jurisdiction and Court fees

The plaintiff prays judgment —

(1) For possession of the said property after declaration of the plaintiff's title thereto (2) For Rs _____ as *mesne* profits (3) For costs of the case

[*Schedule* of property]

[Verification as in plaint No 1]

No 25 Hints for drawing up a plaint in a suit for declaration of right of easement and for injunction

Sec 26 of the Indian Limitation Act has prescribed the way in which right to way passage of water light and air may be

acquired. The mode of acquisition of the particular kind of easement should be clearly set forth in the plaint. Easement may be either of necessity or may be one which has been perfected by 20 years un interrupted and open user as of right. The onus of proving the allegation is on the plaintiff (8 C W N 359). In case of easement of necessity, the plaintiff should clearly show that there is no possibility of enjoying his property except by claiming the easement. Read in this connection 8 Cal 957. An upper riparian owner can acquire easement right of irrigation by custom but he has to prove that the custom is ancient continuous reasonable certain peaceable compulsory and consistent with the other customs regarding right to irrigate. 35 Cal 851. A right of access to a neighbour's land for repairing purposes can be acquired and this is in the nature of an easement of necessity. 16 I C 493. The owner of a servient tenement cannot claim easement against the owner of a dominant tenement. 46 I C 24. Right of catching fish in another's water may also be acquired by easement. 14 C L J 572. One can acquire right of passing rain water from his land to another's land but a defined channel must be proved. 8 C W N 344.

The right of easement is lost if it was not exercised within two years next preceding the suit. It should be borne in mind that no length of permissive possession can confer right of easement upon the user.

The plaintiff may pray for a permanent order of injunction restraining the defendant from putting obstacles in the way of his enjoyment of the right.

A B The plaintiff may value his right of easement and prayer for injunction at his pleasure and pay Court fees on the said sum.

No 25 Plaintiff in a suit for declaration of right of easement and injunction

The above named plaintiff states as follows —

1 The plan attached hereto as *Schedule A* of the plaint will show that the pathway XY is the approach to the plaintiff's house A B from the public

high way CD through a plot of land P, Q R S, belonging to the defendant

2 The said plan will also show the location of the plaintiff's house and other adjoining plots of land belonging to the plaintiff and the defendant

3 The plaintiff's house was constructed some 30 years ago by his father and ever since its construction the pathway XY has been used by the plaintiff and his predecessors in-interest openly, uninterruptedly and as of right to the full knowledge of the defendant and his predecessors in-interest This user of the pathway in the aforesaid manner for upwards of 20 years has perfected the plaintiff's right of easement over the pathway in question

4 The defendant constructed a wall at M N across the said pathway during the plaintiff's absence with family during the last Pujah holidays obstructing the plaintiff's right of passage and thus the plaintiff came to know on his return after the vacation on the 19th of October last

5 The plaintiff may here add that by the above manner of construction of the wall he has been put to great inconvenience and that the defendant had no right whatsoever to cause the plaintiff this inconvenience by the construction complained of

6 The cause of action of the present suit arose on the 19th of October last in village when the plaintiff came to know of the existence of the wall

7 The plaintiff values the suit at Rs for purposes of jurisdiction of the Court and for Court fees

The plaintiff therefore, claims

(1) a declaration that the plaintiff has a right of passage based on easement over the pathway XY

(2) a decree ordering the defendant to demolish the wall and should he not do that the plaintiff may be empowered to effect the demolition and realise the cost thereof from the defendant

(3) a permanent injunction restraining the defendant from constructing any wall across the pathway hereafter

(4) a decree for costs

As / Int A plan of the plaintiff's house describing the pathway in dispute along with other adjoining plots of land is given overleaf

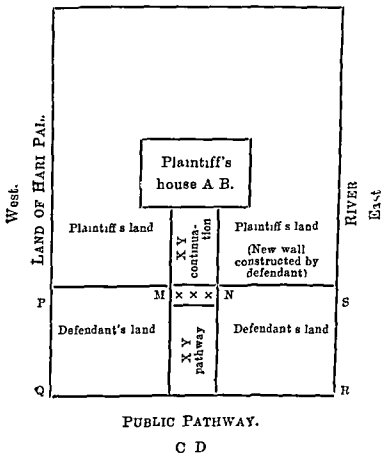
Boundaries of the disputed plot

North	East.	South	West ~
			[Verification]

Schedule A.

North.

LAND OF RAM GHOSH.



Written statement to plaint No 25.

The above-named defendant states as follows —

1 The plaintiff has no cause of action against the defendant

2 The defendant or his predecessors-in-interest had never any right of passage over the pathway in dispute. The description of the pathway as given in the plaint and shewn in the plan attached to the plaint is not correct. The plaintiff has all along used a pathway which is to the north of his house and which serves as the only approach to his house. The plan is misleading and inaccurate and the defendant files along with this a true plan showing the true state of things in the locale

3 The defendant's wall in question is an old one and it is on the north of his garden. It would not be across the plaintiff's pathway XY, even if there really existed any such pathway as fancied by the plaintiff. As a matter of fact there does not exist, nor did ever exist, any pathway as shown by the plaintiff's map; nor did the plaintiff or his people use that pathway within 2 years next preceding this suit and that the suit is barred by limitation

4. The defendant may finally add that the present suit is a sequel of a village party-feud and is based upon nothing else than malice and ill-will.

The defendant accordingly prays that the suit be dismissed with costs

Schedule A.

A plan of the locale

. Verification.

No. 26. Hints for drawing up a plaint in a suit for execution and registration of a deed and for injunction.

The principle underlying a suit of this nature is 'the enforcement of a contract. Where the defendant contracted with the plaintiff for conveying a property or right therein, the plaintiff can bring a suit for compelling the defendant to execute and register a document in terms of the alleged agreement. The plaintiff may file a draft of the proposed document along with the plaint. After the suit is decreed, the plaintiff has to file a draft in terms of the judgment passed in the case and on approval of the draft by the Court, the defendant may be called upon to execute and register the document so approved, 10 C W N. 345. If the defendant refuses to execute and register the document it will be executed by the Court and registered by a Court officer under the orders of the Judge. The document, when thus executed and registered, will have the force of a duly executed and registered instrument 3 C W N 30. The defendant may deny the contract or plead that the terms of the contract were not fulfilled by the plaintiff. The procedure is different when the document was executed but not registered. For procedure in the latter case see the next plaint and the hints given thereon.

No 26. Plaint in a suit for execution and registration of a document and for an injunction.

Description of the Court and the parties as in plaint No. 1.

The above-named plaintiff states as follows:—

1. The defendant No. 1 agreed to sell to the plaintiff a plot of land, situate in village Rampur and described in Schedule A. of this plaint, for Rs. 1000/- and executed and registered a deed of contract to sell the said property on receipt of

Rs 50/- as earnest money the balance of the purchase money being payable within 1 month from the date of execution of the aforesaid contract

2 The contract to sell was executed on the 15th of April Subsequently to this contract, the defendant No 1 got an offer of Rs 120 - for the said plot of land from defendant No 2 and executed another agreement to sell in favour of the defendant No 2

3 The period of one month has not yet elapsed since the defendant entered into the agreement to sell the property to the plaintiff The plaintiff was willing to pay the defendant No 1 the balance of the purchase money agreed upon and wrote to him a registered letter to that effect through Mr a local pleader on the The defendant No 1 refused to accept the same letter and the plaintiff files the same herewith Besides the registered letter the plaintiff spoke to the defendant No 1 more than once and requested him to execute and register the sale deed But the said defendant No 1 would pay no heed to the plaintiff's request. It is the plaintiff's information that the defendant No 1 is contemplating closing the sale transaction, herein referred to, with the defendant No 2 at no distant date

4 As would appear from the facts set forth above, the defendant has no legal right to sell the property in question to the defendant No 2, directly in the teeth of the contract he had entered into with the plaintiff whose right to purchase the property would thus be defeated if the defendant No 1 effects the sale in favour of the defendant No 2 It is, therefore, necessary in these circumstances of the case that a temporary injunction should issue upon the defend-

ant No 1 restraining him from selling the property till the suit is heard and finally decided

5 The cause of action for the present suit arose on the day of e, on the date on which the defendant refused to execute a *kobala* in terms of the contract entered into with the plaintiff in village which is within the jurisdiction of this Court The suit is valued at Rs for purposes of jurisdiction and Court fee is paid according to the *Schedule B* of the plaint

The plaintiff therefore claims —

(a) That a permanent injunction be issued restraining the defendant No 1 from executing a deed of sale or any instrument that is calculated to make the plaintiff's title to the property in *Schedule A* cloudy

(b) That an order be passed directing the defendant No 1 to execute a sale deed in favour of the plaintiff in respect of the property in question on accepting the contracted purchase money minus the amount already paid as an earnest

(c) That the defendant No 1 be directed to execute and register the sale deed in question within a specified time failing wherein the said deed be executed and registered according to the provisions of Order 31 R 34 cl (5) of the O P Code

(d) That a temporary injunction be issued restraining the defendant No 1 from executing and registering any document, in respect of the property in suit, until the present case is finally disposed of

(e) That in the event of the plaintiff's failing to obtain a decree according to para (a) of the prayer a decree may be passed against the defendant No 1

for the amount of earnest money received together with interest thereon at 12 p c per annum

(f) That a decree be passed against the defendant No 1 for costs of the litigation

Schedule A.

Description of the property in suit

Schedule B.

For determining the jurisdiction of the Court the suit is valued at Rs as stated above The Court fee is paid on the calculation given below —

*For enforcing Registration of a document Rs 15/-

The relief for permanent injunction is valued at Rs 10/- on which the Court fee of Rs 12/ is paid.

Total Court fee paid is worth Rs 15/12 as

[Verification]

Formerly Rs 10/ used to be the proper Court fee payable under Art 17 cl (iv) of Schedule II of the C F Act But the amount has been recently raised to Rs 15/ by the Amending Acts passed by the different local Governments

Written statement to plaint No 26

The above-named defendant No 1 states as follows —

1. The defendant No 1 does not admit any portion of the allegations made in the plaint and it is for the plaintiff to prove them all

2 There was, in fact, no agreement with the plaintiff as alleged in para 1 of the plaint, nor

* Relief in these suits being incapable of valuation a Court fee of Rs 15/ is payable according to Art 17 cl (iv) of Schedule II of the Court Fees Act 8 Cal 515, 25 Mad 103 31 Mad 89, 21 P R 1895

did the defendant No 1 accept Rs as earnest money

3 Some 5 or 6 months ago the plaintiff made a proposal for purchasing the property in suit from the defendant No 1 for Rs 1000/- but the latter refused to accept the offer as being very low The defendant No 1 however, subsequently sold the said property to defendant No 2 by a registered instrument on

4 Assuming, but never admitting for the sake of argument that there was in effect an oral agreement between the plaintiff and the defendant the defendant No 1 is not bound by the said agreement, as the plaintiff did not offer to purchase the property within the time specified

5 The plaintiff's suit is based upon ill will and jealousy and consequently merits dismissal

The defendant accordingly prays (a) that the suit be dismissed with costs

[Verification]

No 27 Hints for drawing up a plaint in a suit for enforcing registration of documents

If any one after executing a document refuses to register it then the person in whose favour the document is executed will have to present it for registration within 4 months before the local Sub Registrar under sec 73 of the Indian Registration Act The Sub Registrar will then issue a notice upon the alleged executant of the document requiring him to register the document within the time specified in the notice If the executant does not appear or appears but denies execution in that case the Sub Registrar may not register the document Then within 30 days from the order passed by the Sub-Registrar it would be necessary to move the District Registrar for registration of the document The District Registrar will take evidence adduced by both parties and will determine in a summary way whether the document

was executed or not. If he finds that the document was executed, a certified copy of his order will have to be taken and filed before the Sub-registrar and the latter will then register the document according to law. If the District Registrar finds that the document was not executed then the person who alleges that the document had been executed in his favour may file a suit within 30 days of the District Registrar's orders for enforcing registration of the document through a Civil Court. Otherwise a suit of this nature will lie. (Vide secs 74, 76 and 77 of the Indian Registration Act.) The Court will simply enquire about the genuineness of the execution of the document and not about validity or otherwise of the deed (62 L.C. 789 19 A.L.J. 224). It must be remembered that in a suit under sec 77 of the R Act the plaintiff is required to state and prove that the document was properly presented before the Sub-registrar within 4 months from the date of the alleged execution and that the Sub-registrar refused to register the document and that there was an appeal before the Registrar within 30 days and that the Registrar also passed an order refusing the registration of the document and that the suit is within 30 days from the Registrar's order [73 I.C. 182].

A Court fee of Rs 15/- has to be paid in a plaint of this nature. Please also refer to the hints given before in Plaint No 26.

No 27 Plaint in a suit for enforcing Registration of a document

(Description of the Court and the parties as in plaint No 1)

The above-named plaintiff states as follows.---

1. The defendant borrowed Rsfrom the plaintiff on the day ofin the year . and duly executed the mortgage bond, filed along with the plaint, in favour of the plaintiff in presence of gentlemen whose names appear on the said mortgage deed as attesting witnesses

2 The defendant who agreed to register the mortgage deed subsequently to its execution, deferred the registration on this pretext and that from time to time, when on the .last, openly refused to register the document whereupon the plaintiff presented the said deed before the Sub registrar of (this presentation should be within 4 months of the execution of the document) who issued notice upon the defendant calling upon him to register the document. The defendant appeared before the Sub register in response to the notice and denied the execution of the deed and receipt of any consideration The Sub registrar accordingly passed orders refusing registration on the date The plaintiff preferred an appeal against the orders of the Sub registrar to the District Registrar who upheld the decision of the Sub registrar by his order of date

3 The plaintiff in the circumstances mentioned in the foregoing paragraph, has been compelled to seek relief in this Court for getting the deed registered

4 The cause of action for the present suit arose on the when the District Registrar dismissed the appeal referred to above and refused to register the document on the denial by the defendant of its execution in village where the document was executed (or where the property in question is situate)

5 For purposes of determining the jurisdiction of the Court the suit is valued at Rs and Court fee worth Rs 15 is paid.

The plaintiff accordingly prays —

(a) That it be declared that the defendant executed the mortgage bond in question in favour

of the plaintiff and that the said document is fit for registration according to law

(b) That a decree be passed against the defendant for all costs of the litigation together with interest thereon till realisation

(c) That such other relief to which plaintiff may be entitled under law and equity, be granted to him

Verification

No 27 Written statement for plaint No 27

The above-named defendant states as follows —

1 The present suit is barred by limitation in as much as the plaintiff brought the present suit after expiry of 30 days from the date of dismissal of his appeal by the District Registrar

2 The defendant never borrowed Rs from the plaintiff as alleged in the plaint There was once a proposal that the defendant would borrow Rs from the plaintiff, but the latter having suddenly fallen ill could not advance the amount as proposed The defendant was consequently obliged to borrow the amount he needed from the plaintiff's paternal uncle Mr on executing a handnote for the sum The present suit is very likely an offshoot of an ill feeling subsisting between the plaintiff and his uncle the said Mr

3 The defendant is an illiterate person and he never executed any document in favour of the plaintiff, nor did he empower any body to execute any document on his behalf

4. In the above circumstances, the plaintiff has no cause of action for the present suit

The defendant therefore prays :

(a) that the suit be dismissed with costs,

No 28 Hints for drawing up a plaint in a suit for restraining a Hindu widow from alienating her husband's property and for injunction

A reversioner can institute a suit against the widow if she is about to dispose of her property or a part of there without any legal necessity (Vide 27 All 406) Expenses incurred for performing *Sradh* at Gaya for husband's spiritual benefit and the like have been held to be legal necessities For deciding what is legal necessity and what not please refer to 20 C W N 210

In a suit like this the plaint must clearly show that the defendant widow is believed to have sufficient funds in her hands out of the estate and that there is no necessity for the proposed sale of the property The reversioner is not bound to wait till the death of the widow but may sue her in her life time to restrain a sale or for a declaration that the sale if effected by the widow without legal necessity is invalid and inoperative against the reversioner In the Privy Council case reported in 20 C W N 1323 24 C L J 309 P C it has been held that the reversioner is competent to prosecute a suit in widow's life time for restraining sale or for declaration that the particular sale is inoperative

This however does not prevent any other person who may be the actual reversioner after the widow's death from impeaching the sale that might have been questioned by another reversioner in the widow's life time 43 All 558

A reversioner who gives his consent to the sale cannot however question its validity subsequently as the law of estoppel stands in his way 25 Bom I L R 813

Alienations made with the consent of the then reversioner gives rise to a presumption that the widow had legal necessity for the sale 23 C W N 1025 and 42 Mad 513 P C But the said presumption is rebuttable in a fit case A reversioner may bring a suit for recovery of property sold by the widow within 12 years after the widow's death 68 I C 394

Mere attestation of a deed executed by the widow by the reversionary heir does not necessarily show that the reversioner was a consenting party in the transaction It has to be shewn

that the reverser was aware of the contents of the document
13 C W N 931

A widow can accelerate succession by surrendering or conveying her entire life estate in respect of all the properties in her hands in favour of the heir (Vid. 13 I A 30 P C)

**No 28 Plaint in a suit for declaration and
injunction restraining sale for property
by a Hindu widow**

[Description of Parties and Court as in No. 1]

Plant list

Defendant

1 Sreemati Thakamoni Das

2 Proforma defendant

Mr

The above named plaintiff states as follows —

1 Radha Krishna Sardar died leaving two sons one Dinanath Sardar and other Hridyanath Sardar Dinanath Sardar died leaving plaintiff his only son and heir Hridya died on the 15th March 1905 leaving behind him his widow Sreemoti Thakamoni Dasi the present defendant as his sole heiress

2 The properties described in *Schedule A* of the plaint belonged to the said late Radha Krishna. The facts disclosed in para 1 will show that half of the properties of the deceased have come down to the plaintiff by inheritance and the other half has likewise gone to the defendant as the widow of Hridaya Nath Sardar.

3 The defendant being a Hindu widow is entitled only to a life interest in the properties and she cannot dispose of them except under legal necessity, nor has she authority to commit waste.

4. The father of the only son of defendant is a reversioner under the

Hindu law and would be entitled to the properties now enjoyed by the defendant on her demise

5 The income of the properties in the hands of the defendant is sufficient to meet all legitimate expenses and maintenance of the defendant

6 The defendant with the intention of defeating the plaintiff's right to the properties inherited by the defendant from her husband, is trying to dispose of the same to the proforma defendant on a sham show of legal necessity and has already entered into a registered agreement to sell the properties to the said defendant No 2 The plaintiff apprehends that he will be put to immense loss if the aforesaid sale contracted with the proforma defendant takes place

7 The defendant has no colour of right to waste transfer or encumber the properties of her husband in her hands with a view to defeating the reversionary right of the plaintiff to the said properties

8 The cause of action for the present suit arose on the i e on the date on which the agreement to sell some of the most valuable properties to the defendant No 2 was executed and registered, in village which is within the jurisdiction of this Court

9 The plaintiff values the suit at Rs for jurisdiction of the Court and the Court fees are paid on calculations as noted in *Schedule B*

10 The plaintiff, therefore, claims

(a) A declaration that the defendant has no right to transfer encumber or to waste the properties of her husband in her hands so that the plaintiff-

reversionary right to the said properties be affected in any way

(f) A permanent injunction restraining the defendant No 1 from transferring the properties in suit in favour of the defendant No 2 or any other person

(g) In case it transpires that defendant No 1 has executed a *kobala* in respect of the property in favour of defendant No 2 it may be declared that the said sale is without legal necessity and not binding on the plaintiff

(d) That the cost of the suit may be decreed.

(e) [General prayer]

Schedule A —(of property in suit)

Schedule B —Account of Court fee paid

Value of the land in suit—Rs. 800/- [For jurisdiction purposes]

Value of injunction—Rs 10/-

Court fees to the value of Rs 15/- is paid for declaration and as -/12/- (on Rs 10/-) is paid for injunction—so in all, the plaint is stamped with Court fee of stamp worth Rs 15/12 as only

Verification

Written Statement No 28 for plaint No 28

The above-named defendant No 1 states as follows —

3 The suit is not maintainable in its present form

2 The defendant is in possession of the property which is the subject matter of the suit The defendant's husband, Hridaynath, died after a protracted illness which lasted for several months during which period he had to incur debts

Re by executing a mortgage bond in favour of Mr. ... The defendant considers it desirable to pay off the mortgage debt as early as possible, as otherwise the amount of interest will considerably swell. The income of the properties of the deceased husband of the defendant is small and is not adequate to meet the bare necessities of life of the defendant. There is thus no means left to the defendant to pay off the mortgage debt except by the sale of a half of the mortgaged property and it is with this end in view that the agreement referred to in the plaint has been entered into.

3 That the sale of half the property contemplated by the defendant will be beneficial to the estate and would not amount to an act of waste as alleged in the plaint, in as much as the whole of the property mortgaged may be sold in execution of a mortgage decree which the mortgagee may obtain hereafter.

4 The plaintiff is quite welcome to pay off the mortgage debt and thereby obviate the necessity of the sale of the mortgaged property.

5 The defendant therefore prays that the suit be dismissed with costs.

**No 29 Hints for drawing up an application
(which is considered as a plaint) for enforcing
a private award.**

This application is made under rule 20 of Schedule 2 of the Civil Procedure Code. When a matter is referred to arbitration without the intervention of a Court and an award is made any person interested in the award may apply to the Court that the award be filed and a decree be passed in terms thereof. The application will be registered as a suit as between the applicant

and the opposite party as plaintiff and defendant and a notice of the application will be issued to the opposite party. The defendant may appear and put in objection and the Court after hearing both parties may pronounce judgment according to the award or refuse to file it and a decree will be passed in terms of the said judgment. No appeal lies from the judgment except in so far as the decree is in excess of or not in accordance with the award. The Court has no power in a case like this to remit or amend the award. The Court can simply file the award or may refuse to file it. If the Court finds that the award has determined matters not referred to arbitration the Court will refuse to pass a decree in terms of the award (19 C W N 76 27 All 526 29 Mad 303). The plaintiff applicant after the defendant's objection is filed may withdraw the application if he thinks fit to do so under O XXIII R 1 of the C P Code.

V B A Court fee stamp of Rs 12/ only is required to be paid on this application.

No 29 Plaintiff (application) No for enforcing a private award

Application for filing an award in matters referred to arbitration without intervention of Court. This will be registered as a suit under *Schedule II* Rule 20 of the C P Code.

In the Court of

Applicant

Opposite Party

The humble petition of

1 The applicant is a brother of the Opposite party No 1. The properties mentioned in *Schedule A* are ancestral properties of the applicant and opposite party No 1 and they had been enjoying the same jointly until the end of the year when they thought it desirable to effect a partition of the properties for mutual convenience of enjoyment, and with this end in view they executed and reg

an agreement on ...whereby they appointed Opposite party No 2 as the arbitrator for equally partitioning the properties mentioned in *Schedule A*

2 The opposite party No 3, the said Mr , completed and signed the award, allotting the properties mentioned in *Schedule B* to the applicant and those mentioned in *Schedule C* to opposite party No 1

3 The applicant, in the above circumstances, prays that the said award may be filed and a decree be passed in terms of the award, after service of notice to the opposite parties, the present petition being considered as a plaint in accordance with the provisions of rule 20 of the *Schedule II* of the C P Code

Schedule A of joint properties

Schedule B (properties allotted to the share of the applicant by the award)

Schedule C (properties allotted to the share of the opposite party No 1)

Verification

No 29 Written statement to the above
petition No 29

In the Court of .

The humble petition of Opposite party No 1 in the above suit,

{Most respectfully sheweth —

1. Your petitioner has no objection to a decree being passed in terms of the award

2 It is true that the agreement to refer the matter to arbitration was executed by your petitioner and the applicant jointly

Verification

Application by opposite party No 2 of the above petition

[Descriptions of Court etc as in No 1]

Your petitioner was appointed arbitrator by a registered instrument executed by the applicant and the opposite party No 1 and that your petitioner drew up and signed the award in question after proper allotment of properties to the shares of the parties

Verification

No 30 Hints for drawing up a plaint in an Administration suit

A suit of this nature can be instituted by a legatee under a will or a creditor against an executor or administrator of an estate of a deceased person for an order from the Court directing administration of the property in terms of the will left by the testator. If the Court finds that the defendant is not administering the property in terms of the will it will appoint a Receiver and draw up a scheme for administering the property in terms of the will. It sometimes happens that the parties do not agree as to the proper construction of a will in such a case the Court will have to enter into the question of the construction of the will as well and order administration in terms of the construction arrived at. The Court may if necessary determine whether the directions given in the will are valid in law (39 Cal 87 13 C L J 85). In an administration suit the cost of the litigation is borne by the estate (L R 7 Ch D 33 and 21 C W N 280 at page 291). As to who can bring an administration suit read 45 Bom 75. An administration suit is in essence one for accounts and also for administering the estate for satisfaction of dues of all the creditors and legatees as far as possible and administration and the settlements for another are made by orders in the decree for the benefit of all the creditors (See C P Code Or 20 r 13 App A 41 and App D 17 to 20 Vide Coxborn *vs* Thompson 1809 16 Ves 327 and Adair *vs* New River Company

(1908) 11 Ves 444) An administration suit when brought by a creditor requires Court fee in terms of sec 7 cl IV (f) of the Court fees Act I L R 39 Bom 545

The plaintiff is entitled to value such a suit at his discretion
24 C L J 448

No 30 Administration suit by a pecuniary legatee.

[Description of Court and parties as in No 1]

The above named plaintiff states as follows —

1 Babu of in the District of duly made his last Will dated the whereby he appointed the defendant executor thereof and bequeathed his properties whether moveable or immovable to his executor in trust to pay the rents and income thereof to the plaintiff for his life and after his demise to the testator's legal heirs

2 The testator died on and his Will was proved by the defendant on the (date) before the District Judge of

3 The defendant has failed to properly administer the properties left by the deceased [Here state the particulars of mal administration] and has not rendered true accounts thereof though the plaintiff demanded the same on .

4 That the cause of action for this suit arose at within the jurisdiction of this Court on

5 As para No 5 of 1 (see note)

The plaintiff claims—

1 To have the moveable and immovable properties of the deceased ascertained and administered on a proper construction of the will and for that purpose to have all proper directions given and accounts taken by orders in the decree

2 Such other relief as the nature of the case may require

Verification

Note —The plaint shall bear Court fee stamp worth Rs 15/

No 30 Written statement for plaint No 30

[As in No 1]

The Defendant etc

1 That the Will of Babu contained a charge of debts he died insolvent he was entitled at his death to some immovable property which the defendant sold

2 The defendant applied the whole of the said sums and the sum of rupees , which the defendant received as rents of the immovable property towards the payment of the funeral and testamentary expenses as also some of the debts of the testator

3 The defendant made up his accounts and sent a copy thereof to the plaintiff on the and offered the plaintiff free access to the vouchers to verify such accounts but he declined to avail himself of the defendant's offer

4 The defendant submits that the suit should be dismissed and that the plaintiff ought to pay the costs of this suit

Verification

Framing of issues

Issues arise on the pleadings The question of issues has been dealt with in Chapter V of Part I The object of framing issues is to confine the parties

(1908) 11 Ves 444) An administration suit when brought by a creditor requires Court fee in terms of sec 7 cl IV (f) of the Court fees Act I L R 39 Bom 545

The plaintiff is entitled to value such a suit at his discretion
24 C L J 448

No 30 Administration suit by a pecuniary legatee.

[Description of Court and parties as in No 1]

The above named plaintiff states as follows —

1 Babu of in the District of duly made his last Will dated the whereby he appointed the defendant executor thereof and bequeathed his properties, whether moveable or immovable, to his executor in trust to pay the rents and income thereof to the plaintiff for his life and after his demise to the testator's legal heirs

2 The testator died on and his Will was proved by the defendant on the (date) before the District Judge of

3 The defendant has failed to properly administer the properties left by the deceased [Here state the particulars of mal-administration] and has not rendered true accounts thereof, though the plaintiff demanded the same on .

4 That the cause of action for this suit arose at within the jurisdiction of this Court on

5 As para No 5 of 1 (see note)

The plaintiff claims—

1. To have the moveable and immovable properties of the deceased ascertained and administered on a proper construction of the will and for that purpose to have all proper directions given and accounts taken by orders in the decree

2 Such other relief as the nature of the case may require

Verification

Note —The plaint shall bear Court fee stamp worth Rs 15/

No 30 Written statement for plaint No 30

[As in No 1]

The Defendant etc

1 That the Will of Babu contained a charge of debts he died insolvent he was entitled at his death to some immovable property which the defendant sold

2 The defendant applied the whole of the said sums and the sum of rupees which the defendant received as rents of the immovable property towards the payment of the funeral and testamentary expenses as also some of the debts of the testator

3 The defendant made up his accounts and sent a copy thereof to the plaintiff on the and offered the plaintiff free access to the vouchers to verify such accounts but he declined to avail himself of the defendant's offer

4 The defendant submits that the suit should be dismissed and that the plaintiff ought to pay the costs of this suit

Verification

Framing of issues

Issues arise on the pleadings The question of issues has been dealt with in Chapter V of Part I The object of framing issues is to confine the parties

(1908) 11 Ves 444) An administration suit when brought by a creditor requires Court fee in terms of sec 7 cl IV (f) of the Court fees Act I L R 39 Bom 545

The plaintiff is entitled to value such a suit at his discretion
24 C L J 448

No 30 Administration suit by a pecuniary legatee

[Description of Court and parties as in No 1]

The above named plaintiff states as follows —

1 Babu of in the District of duly made his last Will dated the whereby he appointed the defendant executor thereof and bequeathed his properties whether moveable or immovable to his executor in trust to pay the rents and income thereof to the plaintiff for his life and after his demise to the testator's legal heirs

2 The testator died on and his Will was proved by the defendant on the (date) before the District Judge of

3 The defendant has failed to properly administer the properties left by the deceased [Here state the particulars of mal administration] and has not rendered true accounts thereof though the plaintiff demanded the same on

4 That the cause of action for this suit arose at within the jurisdiction of this Court on

5 As para No 5 of 1 (see note)

The plaintiff claims—

1 To have the moveable and immovable properties of the deceased ascertained and administered on a proper construction of the will and for that purpose to have all proper directions given and accounts taken by orders in the decree

No 3 Issues (Suit for arrears of house rent)

[From Plaintiff No 3 and W. S No 3]

1 Did the plaintiff sell the house to in March, 1912 ? If so can the plaintiff get rent of the house, from March 1912 from the defendant ?

2 Is the defendant's plea of payment of rent, for January and February, to plaintiff true ?

3 To what relief, if any, is the plaintiff entitled ?

No 4 Issues (Suit for rent)

[From Plaintiff No 4 and W S. No 4]

1 Does the relationship of landlord and tenant exist between the plaintiff and the defendant in respect of the land and the *jama* of Rs 16 in suit

2 To what relief, if any, is the plaintiff entitled ?

No 5 Issues (Suit for damages for malicious prosecution)

[From Plaintiff No 7 and W S No 7]

1 Has the plaintiff any cause of action for this suit ?

2 Did the defendant maliciously prosecute the plaintiff in the criminal Court as alleged ? Had the defendant any reasonable and probable cause for instituting the criminal case against the plaintiff ?

3 Is the plaintiff entitled to get any damages ? If so, how much ?

4 To what relief, if any, is the plaintiff entitled ?

to the principal questions in dispute in the suit. After the issues are framed, the parties become fully alive to the disputed points and adduce evidence relevant to each issue. The Court will not admit evidence that is in no way related to the issues in the case. It is, therefore, important that due care be taken of the issues framed. Issues are framed only on the material points in dispute in the case. The practice of framing issues on subsidiary and unimportant matters has been condemned, (Vide 35 Bom 435). If the trial Court fails to frame proper issues the appellate Court may send back the case on remand for retrial after framing proper issues, 11 W R 20. Issues framed upon some of the plaints and written statements embodied in this Part are given below and these models may be found useful by the junior practitioners.

No 1 Issues (Money suit)

[From Plaint No 1 and W S No 1]

- 1 Did the defendant execute the bond in suit and borrow Rs 1 200 from the plaintiff?
- 2 Did the defendant make payments as alleged in the plaint?
- 3 To what relief, if any, is the plaintiff entitled?

No 2 Issues (Suit on a Hand note)

[From Plaint No 2 and W S No 2]

- 1 Is the defendant's plea of payments true?
- 2 What amount, if any, is due to the plaintiff from the defendant?
- 3 To what relief, if any, is the plaintiff entitled?

THE
CIVIL COURT PRACTICE & PROCEDURE.
PART II.

CHAPTER I. :—*Contains—*

A list of various applications filed under
the C. P. Code.

CHAPTER II. :—*Contains—*

Short notes on the sections, Orders and Rules
under which the Petitions mentioned
in Chapter I are filed.

APPENDIX TO PART II.

Contains models of all petitions mentioned
in Chapter I.

No 6 Issues (Title suit for recovery of property
with mesne profits)

[From Plaintiff No 24 and W S No 24]

1 Has the plaintiff any cause of action for the suit ?

2 Has the plaintiff any title to the land in suit ?

3 Is the suit barred by limitation ?

4 Is the story of the plaintiff's possession and dispossession true ?

5 Is the plaintiff entitled to any mesne profits ?
If so, how much ?

6 To what relief, if any, is the plaintiff entitled ?

PART II.

CHAPTER I.

*Reference to the Important Sections Orders and Rules
of the Civil Procedure Code and the Important
Sections of the Bengal Tenancy Act A
list of Important Petitions
made under those laws*

**For Forms of Bengali Applications referred
to in this Chapter—See Bengali Part**

**Applications under the Civil Procedure Code
(Before decree) ***

1 Application for permission of the Court to get
a plaint verified by the plaintiff's agent—(Order VI
R 15)

2 Application for an attachment or arrest before
judgment—(Order XXXVIII—R 5)

3 Application for issue of a summons on a
witness—(Order XVI—R 1)

(a) Application for issue of a warrant or pro-
clamation against a witness—(Order XVI—R 10)

4 Application for calling records—(Order XIII
—R 10)

5 Application for certifying payments made to
the decree holder out of Court—(Order XXI—R 2)

6 Application for the execution of a decree—
(Order XXI—R 11)

7 Application for the execution of a decree by
another Court—(Order XXI—R 6)

* This list is a sort of index to the modes of petitions under
C P Code Incorporated in the Appendix to this part

20 Application for issue of a commission for local investigation—(Order XXIV—R 9)

Re minors

21 Application for appointment of a guardian of a minor defendant—(Order XXXII—R 3)

22 Application by a next friend or guardian of a minor party for permission to compromise a case—(Order XXXII—R 7)

Pauper

23 Application by a pauper plaintiff for permission to sue as a pauper—(Order XXXIII—R 1)

Mortgage decree

24 Application for making a preliminary mortgage decree absolute—(Order XXXIV—R 3)

Injunction

25 Application for issue of a temporary injunction—(Order XXXIX—R 1)

Receiver

26 Application for appointment of a receiver—(Order XL—R 1)

Arbitration

27 Application for appointment of arbitrators

Note.—For application for filing an award in a matter referred to arbitration without intervention of the Court see plaint in Appendix to Part I

Stay of execution

28 Application for stay of execution—(Order XXI—R 26 and Order XLI—R 7)

Adjournment

29 Application for adjournment of a case—(Order XVII—R 1)

8 Petition of claim to an attached property—
(Order XXI—R 58)

9 Application to set aside a sale on deposit—
(Order XXI—R 89)

10 Application to set aside a sale on the ground
of irregularity or fraud—(Order XXI—R 90)

11 Application for determining questions in execution proceedings Sec 47

12 Application by the auction-purchaser to set
aside the sale on the ground of the judgment-debtor's
having no saleable interest in the property sold—
(Order XXI—R 91)

13 Application by a *bona fide* claimant to be restored
to possession after delivery of possession to
the auction purchaser—(Order XXI—R 101)

14 Application for relief, after resistance to
the auction purchaser's possession of the property
purchased—(Order XXI—R 97)

Death of party, compromise, withdrawal & deposit

15 Application by a legal representative for
substitution after the death of a party—(Order XXII
—R 2)

16 Application for withdrawal of a suit or
abandonment of a part of the claim—(Order XXIII
—R 1)

17 Application for compromise—(Order XXIII—
R 3)

18 Application by the defendant to deposit
money in satisfaction of the claim before judgment—
(Order XXIV—R 1)

Commission.

19 Application for examination of a witness on
commission—(Order XXVI—R 1)

particulars, and petitions required to be verified should be verified by the applicant at the bottom. *For important rulings on the Sections and Rules referred to in this Chapter—See next Chapter* Bengali forms of all petitions have been given in the Bengali Part.

For English form of all petitions.—See Appendix to this Part

CHAPTER II.

Short notes on the Orders, Rules and Sections under which the petitions referred to in Ch I are filed.

(No 1.—O VI. R. 15.)

(1) The Court must be satisfied that the *person verifying knows the contents* I. L. R. 25 All 431.

(2) *A co plaintiff can verify.* I L R 17 Cal 580.

(3) A verified pleading is no evidence in the case and no case can be decided solely upon such a pleading. 43 Cal 1001.

(No 2.—O. XXXVIII R 5)

(1) If the Court can attach property *outside jurisdiction*—Read 7 C. W. N. 216

(2) The term "*property*" includes both moveable and immoveable properties I. L. R. 17 All 82

(3) Attachment before Judgment is withdrawn with the dismissal of the suit; 13 C. L. J. 243. 22 C. W. N. 927.

(4) *Attachment, before Judgment, of immoveable property cannot be ordered by the S. C. Court aft the amendment of the S. C. C. Act. in 1926*

(5) *Attachment, before Judgment, can be orde in a mortgage suit under certain c^t tanc when the property had been sold nt*

sale proceeds of the property may be attached before Judgment in a mortgage suit. 46 Cal 245

(6) Opportunities should be given to the defendant to furnish *security before an order for attachment prior to judgment can be passed*—44 I. C. 240—15 I. C. 604

NB—Claim can be preferred to such attachment.

(No. 3—O XVI, R 1)

(1) The application shall contain the names and residence of the witnesses Diet money and travelling costs should be deposited with the application and printed summons duly filled up (signed by the pleader) shall be filed with the application.*

Note—For liability of witnesses—Civil and Criminal, see 33 C. L. J 94 (F B)

(No 3(a)—O. XVI, R 10)

In case of application for warrant, it should be supported by an *affidavit* shewing that the witness is a material one and that he was personally served with summons

Note—A witness cannot be fined unless his properties were attached beforehand, 31 C L J 363

(No 4—O. XIII, R 10)

The application must be supported by an affidavit. The affidavit may be sworn by any person acquainted with the facts of the case.

(No 5—O. XXI, R. 2)

(1) The rule has no application to payments made before decree. 8 C. W. N. 102.

* Under the recent ruling reported in 33 C L J. 149, salaries of Government Servants cited as witnesses were not required to be paid by the parties citing them, but the Bengal Government has issued a new circular for payment of salaries of Government Servants cited as witnesses by private parties

(2) This rule applies even in cases of mortgage decrees—28 Mad. 473, but it has no application in cases of payment by persons other than the judgment-debtor; 35 Mad 659

(3) Sec 47 refers to the Court executing a decree and this rule also applies to a Court whose duty it is to execute it 7 C W. N 172 at page 174

(4) For uncertified payment the J D can bring a suit against the D. H. for recovery of the amount—25 Cal. 718, 43 Bom 240.

(5) An application by the J. D for certifying payment comes under sec 47 and the order passed is appealable. 3 P. L T 487

Remedy in cases where the payment is not certified within 3 months

(i) The remedy of the J. D lies in a suit for damages, I. L R 21 Mad 409 16 C W. N 923.

(ii) But in such a suit the plaintiff cannot seek for a declaration that the previous decree was satisfied by such payment, nor can the plaintiff ask for an injunction restraining execution of the decree I L R 31 Cal 480, 8 C. W. N 395

Payment to one decree-holder

(iii) Such payment does not bind the other decree-holders, I. L R 26 All 334, see I L R. 9 Cal 831

Certification of Payment

The decree-holder may apply for having the payment certified at any time, 4 Pat L.J 159, and 26 C.W. N 529, *contra* 23 C W N. 320—where it was held that Decree-holder must apply before the decree is time-barred. The J D. can apply for certification of payment within 90 days from the date of payment. See Art.

174 of the Limitation Act, for limitation read 19 C W. N 650 Even in case of the decree-holder's fraud judgment debtor cannot prove payment which was not certified within 90 days, 16 C W N 923, read also 29 Mad 312.

Note —A payment made before 90 days may be certified by the D H in the execution petition to save limitation 26 C W N 529 Read 23 C W N 320 81 Mad 256

Where the rule does not apply.

If an application is made for making a mortgage decree final, the application being in the suit and not in the execution proceeding, this rule has no application 39 All 352

Uncertified payment if can be proved in a case for setting aside sale

(4) Such a payment can be proved to establish fraud I L R 14 Cal 376 see also I L R 15 Cal 557

(5) For orders passed under this section and which have the force of decrees, See the Chapter on Appeal

(6) For cases regarding setting aside of execution sales see notes on Order XXI R 90 (Petition No 10)

(No 6—O XXI, R 11)

(1) For English form of application see *Form No 6* of the First Schedule Appendix E of the Code of Civil Procedure

(2) The application should be *verified* (see the Chapter on Execution of decrees)

(3) *An informal application* for execution, subsequently amended, keeps a decree alive I. L. R. 12 Cal 161

(3) (a) An oral application, in a previous execution case, may be a step in aid of execution for saving limitation. 22 Bom. 722, 723 41 Mad 255

(4) In case of appeal from any portion of the decree, the decree may be executed in the same way as if, the appeal related to the whole decree and the period of limitation runs *from the date of the final decree on appeal* I L R 26 Mad 91 F B, 2 C W N 556 F B

(5) For purposes of limitation "*date of decree*" means the date on which the judgment was pronounced I L R. 25 Cal 109

(6) Execution petition can not ordinarily be amended 17 Cal 631, but under certain circumstances amendment may be allowed—22 C W N 542

(7) An application for execution may be verified by a person acquainted with the facts of the case—26 All 154

(8) *Execution must be made in the Court which passed the decree even if the District Judge has transferred business regarding local limits to some other Court* 26 C W N 216

(9) The way in which enforcement of the decree is sought for must be mentioned in the application, otherwise it is liable to be rejected—19 Bom 34

Note.—D H at random can not withdraw from an execution proceeding at any stage 18 C L J 53

A bidder can not also withdraw his bid—19 C W N 633 21 C L J 174

(10) *Bid accepted by the Nazir can be rejected by Court on the ground of insufficiency—even though the Property was knocked down* 19 C W N 633 (contra 27 C W N notes 116 page)

(No 7 O XXI R 6)

For particulars see Chapter VIII Part I on Execution of Decree and rulings given under No 6.—O. XXI R. 11.

(1) If an application for execution is dismissed by the Court to which the decree has been sent for execution the same Court cannot entertain a second application some time afterwards 3 C W N (S N) CCXI

(2) If decree is sent to another District but *not* though the District Judge, the Court to which the decree is transferred has no jurisdiction to execute it I L R 22 Cal 164

(3) An order refusing to transfer a decree is *appealable* as an order under sec 47, 8 C W N 575

(4) If the Court does not send certificate to the executing Court and sale is held by the latter Court the sale will not be void—20 Mad 10

Note—An order dismissing an objection to an *execution case* can be set aside under the inherent power of the Court—21 C W N 769

(No 8—O XXI R 58)

(1) Under section 173 of the Bengal Tenancy Act *no claim can be preferred* where a tenure or holding is attached in execution of a *rent decree* I L R 28 Cal 382 F B—5 C W N 474

(2) This rule has no application where the property is going to be sold in execution of a mortgage decree inasmuch as there is no attachment in such a case 18 Bom 98 5 C W N 474 F B

(3) A claim petition can not be tried after the sale of the property 4 Pat L T 544

(4) Question of possession only is tried in a claim case, 13 Bur L T 214, 29 Cal 543

A B An order rejecting a claim is final The unsuccessful party can file a suit but such an order is not interfered with in revision. See I L R 8 Mad 484 Full Bench Such a suit must be brought within 1 year —32 Cal 537 24 Cal 553

(No 9—O XXI R 89)

(1) If an application for setting aside the sale is made under Order XXI, Rule 90 *this application can not be made unless the previous application is withdrawn*

Note—For difference as to deposit under the C P Code and that under the B Tenancy Act—Read 20 C W N 859

(2) The applicant shall deposit the decretal amount and costs, as noted in the sale proclamation, together with *a per cent of the purchase money* vide para 1 (b) of order 21 r 89 But the J D will remain liable for subsequent costs and interests vide para (3) of the said rule Unless the entire amount is deposited, the sale will not be set aside A mistake in calculation by a Court officer will not help the J D 26 Cal 449

(3) A *benamdar* of a person whose property is sold can apply 1 C W N 135

(4) A *mort jagee* of a tenure or holding can apply 5 C W N 821 F B—I L R 29 Cal 1 (F B) A reversioner can—19 C L J 72

This rule has no application where the decree of a civil Court is transferred to the Collector for execution 40 All 425

N B The application and deposit shall be made within 30 days after sale—50 I C 914 and no sale can be set aside in part, 1 C W N 703

(No 10—O XXII R 90)

(1) If application under this rule be dismissed for default, and if the Court refuse to restore the case, no appeal lies from that order, 29 All, 596 *Vide* 19 C W N 25 and also 759

(2) The auction-purchaser and the decree-holder are necessary parties to an application under this rule (See O 21 R 92)

The judgment debtor is not bound to deposit the costs of taking copy of the decree costs of Vakalatnamah and Poundage fee 16 C W N 736—15 C L J 89 40 All 209

Limitation

The application shall be made within 30 days from the date of sale. If the judgment debtor comes after that time, he must have to bring his case under section 18 of the Limitation Act, 1 C W N 67 Thirty days have to be counted from the date of deposit of earnest money under O 21, R 84 C P C, 50 I C 914.

Material irregularity

(1) Absence of notice under Or 21, R 66 for settlement of the term of the sale proclamation. 4 Lah 243 15 C W N 428

(2) Combination amongst bidders 13 C W N. 87 Read also 4 C W N 228

(3) Omission of the amount of revenue payable I. L. R 9 Cal 656 P C 23 Mad 628 But not omission of rent I L. R 7 Cal 723

(3) (a) Omission to beat drum I L. R 10 Bom 504

(4) Omission to issue fresh proclamation when a part of the property is released I L. R 3 Cal 544 See 11 C W N 393 P C—5 C L J 136 For sale after waiver of fresh proclamation by one of the judgment-debtors see I L. R 18 Cal 496

(5) Omission to fix sale proclamation in the Collector's office in case of Revenue paying lands—I. L. R 18 Cal 422 F. B

(6) Omission to state the hour of sale I L R 24 Cal 291 8 C W N 686 51 I C 864 Sale earlier than the hour stated in proclamation is void I L R 16 Cal 794

(7) (a) False statement that the property is charged I L R 8 All 116

(b) Vague description of the property 34 Mad 143

(c) Absence of specification of actual incumbrance 6 C W N 636

(8) Understatement of value of property accompanied by substantial injury—*Vide* 15 C W N 577 2 C W N 550 P C 13 C L J 192 16 C L J 98 and 6 C W N 836 13 C W N 370 P C But see 12 C W N 757 it is not fraud 13 C W N notes 120

(9) Publication of proclamation less than 30 days before sale I L R 21 Cal 66 P C and 31 Cal 385

(10) Purchase by decree holder without Court's permission I L R 11 Cal 731 41 Bom 357 (See No 15) or at a price lower than that fixed by Court (which is fraud) 5 C W N 265

(10) (a) *If a third party bona fide be purchaser—the sale can not be set aside even if it be found that the decree has been satisfied before sale or be set aside afterwards* 20 C W N 84 notes 37 C L J 145 at page 170

(11) Failure of immediate deposit of 25 p c after sale I L R 16 Cal 33

(12) Sale so conducted that would be bidders were induced to go away 11 C W N 1109 P C

(13) Court is bound to set aside sale induced by misrepresentation of its officer 13 C W N 249 P C 9 C L J 165—I L R 36 Cal 323

(14) Omission of notice under O XXI, R 22, see 13 C L J 162 *Want of permission to bid* 41 Bom 357

(15) Substantial injury—Read, 16 C. W. N. 1022

N B—Judgment debtor can contract to waive his right to question the irregularities of a sale—13 C L J 192, Read however 11 C W N 848

If minor J D was not represented by a guardian—sale would ordinarily be void—19 C W N. 935

Note—Absence of attachment is not a material irregularity It is an irregularity only Attachment is made for the benefit of D H and not of J. D 30 Mad 255 But the Allahabad and the Bombay High Courts are of different opinion vide 21 All. 311 & 36 Bom 156 Where the notice under Or 21—R. 22 is not served on J D the sale is liable to be set aside—21 C W N 776 1921 Pat 181

Whether substantial injury is due to material irregularity.

(1) There must be some evidence, whether direct or indirect, that it is the result of irregularity. See I L R 31 Cal 815—8 C W N. 686 See 1 C L J. 15 F B—9 C. W. N. 343—I. L R 32 Cal 502

(2) Inadequacy of price may be inferred from material irregularity, see I L R. 31 Cal 815—8 C W. N. 686

(3) Where property was sold for a fair value, sale was upheld notwithstanding material irregularity, see 9 C. W. N. notes 99

(4) Inadequacy of price in itself is no ground for setting aside a sale Fraud cannot be inferred from this; 12 C. W. N. 757. See 13 C W. N. notes 151

(5) Mere irregularity is not sufficient to set aside sale without substantial injury. 16 C W. N. 1 P. C.

(6) Applicant must prove irregularity and also that property was sold at a low price—45 I. C 212

Fraud

(1) Sale cannot be set aside only for material irregularity or only on the ground of fraud but to have the sale set aside, J D must prove that substantial injury was occasioned by fraud or material irregularity 21 All 140

(2) Applicant must show that the sale was kept concealed from his knowledge by fraud 1 C W N 67. For limitation after fraud is proved—read 48 Cal. 119

(3) After service of notice under S 167 Bengal Tenancy Act, annulling a mortgage, the mortgagee may apply to set aside the sale if fraudulent 10 C. W N. 976

(4) Combination among intending purchasers not to bid against one another to obtain property at a low price is fraud 6 C L J 111. (Dissented from I. L R 36 Cal 34=13 C W N 89)

(5) Conduct of decree-holder in offering bids through a *benamdar* in excess of value stated in sale proclamation is fraudulent, 13 C L J 312

(6) Fraud of A P or D H vitiates the sale, 6 C. W. N 279, see page 283, 72 I C 625

Who may apply.

(1) Beneficial owner—(I L R 20 Cal 418) as he is bound by proceedings against the *benamdar*—6 C W N. 706

(2) A purchaser of a tenure prior to attachment in rent execution—I L R Cal 802

(3) An unrecorded tenant—13 C L J 277 & page 260

(4) A part purchaser of an occupancy before rent decree—9 C W. N 134

(5) A co-judgment debtor where similar action by one J. D. has failed—16 C. L J. 98

(6) Legal representative of J. D. though not made a party—5 C W. N. 10 P. C.

(7) Mortgagee—I L R 13 Cal 346

Note.—Purchaser of non transferable occupancy holding cannot apply 13 C W N 652

Note—*When the sale is impeached on the ground of fraud J D must apply under Or 21 R 90 but where the decree as well as the sale are impeached on the ground of fraud a suit will lie to set aside both decree and sale 30 Mad 215 24 Mad 658 To understand where sec 47 is applicable—see the principle as laid down in 15 C W N 112 Section 47 does not apply to questions between D H and his transferee 20 C W N 679*

Notice

Notice of application should be given to the auction-purchaser—13 C L J 535 and to decree-holder I L R. 15 All 407

Limitation

Limitation runs from the date on which the fraud becomes known to J. D—I L R 17 Cal. 769 F B 48 Cal 119

Waiver and Compromise

(1) When the J. D compromised the case on condition that the sale would be set aside on payment of money within a time, but the payment was not made within the time, the sale can not be set aside—6 C L J 176, see also 13 C L J 192 Time cannot be extended—36 Cal. 422, 29 Cal. 577.

(2) Compromise petition admitting service of sale proclamation is binding on J D—I. L R 29 Cal 577.

(3) Waiver of right to question irregularities in sale does not amount to waiver of right to question the sale on the ground that no sale proclamation was issued—11 C. W. N. 848—6 C L. J. 62

Note—An order passed under this rule is appealable but no second appeal lies from the order of the first Appellate Court. The inclusion of word Fraud in the rule has taken out the case from the purview of section 47 C P C—so second appeal is barred

(No 11—Sec 47 C P C)

(1) For the purpose of this section a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to this suit. But this was not the law under the old Code—*Vide* I L R 29 Cal 696

(2) An application under this section can be treated as a plaint if necessary, on payment of additional court fees (*Vide* cl 2)

(3) A legal representative of a party for purpose of this section shall be determined by the executing Court

(4) When J D offers obstruction to D. H's taking delivery of possession of property the question comes under this section and the order passed becomes appealable 1921 M W. N 698

(5) The question of non service of notice under Or 21—r 22 comes under this section 5 Pat L T 61.

(6) Question of fraudulent adjustment of decree comes under this section 41 All 443.

Representative

(1) Unregistered transferee of a portion of a holding though not a party to the rent decree, being bound by the decree, is representative of the J D 9 C W. N 134

(2) The Official Assignee is the representative of an insolvent J D 5 C W N 761

(3) An *Ejaradar* of the J D is his representative. 5 C W. N 654

(4) Mortgagee of J. D. may come under this section. 1 P. L. T. 267.

(4) Purchaser of interest of the J. D. and who is bound by the decree is a representative of the J. D.; 1 C. W. N. 37 F. B. = I. L. R. 24 Cal. 62.

(5) Purchaser of J. D's interest either at auction or by a private sale is his representative. I. L. R. 26 All. 447 and 2 C. W. N. 429.

(No. 12—R. XXI. R. 91.)

Where no application lies.

(1) This application does not lie if the area is less than that stated in the proclamation. I. L. R. 20 Cal. 8 P. C.

(2) Where the misdescription of property does not materially affect purchaser's interest. I. L. R. 29 Cal. 420 = 4 C. W. N. 873.

(3) This rule does not apply when some of the judgment-debtors have interest in the property—nor when the judgment-debtor has some interest in the property. 41 I. C. 850.

Note.—No regular suit lies to set aside a sale when J. D. has no saleable right in the property sold. 51 I. C. 95 see *contra*. 41 I. C. 924.

Where application lies.

Where the property has no existence or saleable value. I. L. R. 10 Cal. 308.

(No. 13.—O. XXI. Rr. 97, 100.)

Symbolical possession taken by A. P. does not amount to physical dispossession. I. L. R. 30 Cal. 710. (See No. 2.)

This application lies if any person is aggrieved by taking symbolical possession by A. P.; 1 C. L. J. notes 40.

Possession means not only physical but constructive possession *e g.* by receipt of rent from tenants, but a claimant can not succeed, if his success would practically restore judgment debtor into possession 3 C L J 293-33 Cal 487

Note—Order under this rule has not the force of a decree 1 C W N 192

Limitation

If no enquiry is made, the suit will not be barred by the one year rule—11 C W N 487—I L R 34 Cal 491

(No 14—O XXI R 97)

(1) An auction purchaser who is dispossessed after getting possession can also apply under this rule 1 C W N 192

(2) Decree holder who is resisted in execution of a decree may again apply for possession if the resistance is repeated—13 C W N 714 8 Bom 602 26 All 365, but if D H after getting possession is dispossessed, he must bring a regular suit 43 M L J 179

A B—This application is considered as a kind of claim and the unsuccessful party may bring a regular suit under Order XXI R 103 Where applicant is resisted he may apply for fresh delivery of possession 4 Pat L J 94 *contra* 11 Bom 473 and 26 All 365

(No 15—O XXII R 2)

This application shall be made within 3 months from the date of death of the party This application is made in case of death before decree 9 C W N 117

Note—If defendant in a mortgage suit dies after Preliminary decree and no substitution is made within time the suit abates—25 C W N 595 An appeal may abate against the dead respondent only—when liability is joint and several—33 Cal 580 11 C W N 504

(No 24 —O XXXIV, R)

This application should be supported by an affidavit For form of affidavit in Bengali see Bengali Part For English form see Part II (B) Notice may be issued on the defendant before the decree is made absolute and an order making the decree absolute is made after hearing defendant's objection, if any

(Limitation—8 years—23 C W N 376)

Note —In a mortgage suit against some heirs of mortgagor, the Court can pass decree for proportionate claim against defendants on the record—23 C W N 594

(No 25 —O XXXIX, R 1)

For particulars and rulings see Chapter IX, Part I For form of Bengali affidavit see Bengali Part

(No 26 —O XL R 1)

(i) Receiver—An *ex-parte* order should not be made for appointment of a Receiver, 20 C W N 1009 Appointment and removal of a Receiver are discretionary with the Court—4 H L C 997 30 P W R 1920—but the discretion should be properly exercised 14 Bom 474 at page 493

(ii) Receiver may be appointed in a mortgage suit 23 C L J 440, 7 C W N 452

(iii) In a partition suit Receiver may be appointed 14 C W N 560, 14 Bom 431

(iv) Receiver's possession of property is possession on behalf of the rightful owner 2 C L J 602, 35 I C 17

(v) Receiver is liable for accounts 14 C L J 445.

(vi) Receiver may sue or be sued with permission of the Court 19 C W N 45 A Receiver is liable

for loss due to his negligence In *re* Skirrels 2 Hog 192 Read however 20 Mad 224 F B

(vii) If a Receiver is sued without Court's permission, the defect may be cured by subsequently obtaining the necessary permission—15 C W N 872, 22 Bom L R 319, 61 I C 888

(viii) Acts of the Receiver within his authority are acts of the Court 7 C W N 799

(ix) Under the new C P Code a subordinate Court can appoint a Receiver without reference to the District Judge

(x) Where reasonable suspicion arises that the defendant may remove large amount of property, a Receiver should be appointed I L R 27 Cal 279, 5 C W N 362

(xi) Where acts of waste have been committed by defendant a Receiver should be appointed I L R 32 Cal 741

(No 27)

See Chapter X. Part 1, on *Arbitration*

(No 28—O XXI, R 26 and O XLI, R 7)

(1) In case of appeal from a money decree, execution may be stayed on depositing the decretal amount or on furnishing security I L R 31 Bom 241

(i) The issues in execution proceedings can be referred to arbitration 42 I C 467

(ii) Unless a pleader is specially authorised in the Vakalatnama he can not refer a case to arbitration 23 C W N 200 (notes)

(iii) Arbitrators can not review their award. 38 Cal 421

(iv) Arbitrators must give notice of their sittings to the parties concerned 56 I C 325

(v) An award not containing decision on all points is void All the points in a case must be brought to the notice of the arbitrators 14 C L J 188, 24 C W N 775

(vi) Arbitrators are guilty of judicial misconduct when they take evidence in the absence of the opposite party and give the latter insufficient opportunity of adducing evidence, 18 Bom 299 13 C L J 399, 148 P W R 1907 Corruption is a ground for setting aside an award (1889) A W N 124

Note—All defendants including absent defendants must join in making the reference otherwise reference will be invalid—Vide 31 C L J 156

(No 29—O XVII, R 1)

(1) The grounds should be clearly stated and if possible the application should be supported by an affidavit and costs of adjournment ordered by the Court should be paid

(2) If after the application for time is rejected the pleader does not appear, it amounts to non appearance of party who applied for time See 8 C W N 97

(No 30—O XLVII, Review)

For forms, details and rulings—see the Chapter on *Review*

(No 31—Order VI R 1)

Plaint may be amended under this rule at any time before judgment An appellate Court under certain circumstances can amend plaint provided the character of the suit is not changed by such amendment.—Vide 5 C. W N 273, 20 C W N 1276

(No 32 Sec—152)

(1) An application for amendment may be entertained only when the Court has made an obvious slip or mistake—11 M L T 33 25 P L R 1913 79 I C 86

(2) When a decree is not in conformity with the judgment as to the payment of costs the decree should be amended 1 C W N 65

(3) Application for amendment of decree after a long period is not allowed 7 C W N 880 1922 M W N 731 Read however 11 O L J 227 There is no limitation for amendment of a decree I L R 21 Cal 259

(4) Decree can not be amended in terms of a compromise filed after the decree 4 C W N 725 P C

(5) A suit lies in a Civil Court to rectify a mistake in a decree 8 C W N 473

(6) After the decree of the first Court has been confirmed in appeal—the first Court has no jurisdiction to amend the decree—14 C W N 667 32 All 993 20 M L J 587 But the decree can be amended by the lower Court during the pendency of the appeal in higher Court 2 Pat L R 6 98 I C 94 18 C W N 772

(No 33—Sec 151)

(1) Every Court has inherent power to recall its own orders obtained through fraud or misrepresentation or suppression of facts 13 W R 256 31 C L J 48 But the Court's inherent power cannot be exercised in contravention of the statutes—19 C W N 835

(2) Every Court has a right to correct its own mistake 9 W R 301 and to prevent an abuse of its processes—28 Mad 28 3 C L J 276

(3) Court must exercise its judicial discretion in amending orders or decrees 20 C L J 18

N B A decree affirmed in appeal should not be amended by the lower Court For principle see 12 C L J 53 See I L R 17 All 267 F B and 9 C W N short notes (68)

Note For Amendment of *Sale Certificate* and inherent power of Court—See Chapter on Review

(No 34—Sec 144 C P C)

(1) When a decree of the first Court is superseded by that of the appellate Court—the Court executing the decree is competent to make complete restitution—I L R 22 Cal 501 Under the old Code the party might bring a regular suit but under cl 2 of section 144 of the new C P Code no suit shall be instituted for the purpose of obtaining restitution or other relief which can be obtained by an application under this section Restitution may be claimed against an assignee 24 All 288 38 Mad 36 *Vide—Contra* 24 All 288 But restitution may be claimed against a surety 46 I A 298 P C at page 236

(2) Every Court which sets aside a decree or order has inherent power to order restitution of any thing taken in execution of the decree or order set aside 2 C L J 37—*n*

(3) Right of restitution cannot be enforced against a person not a party to the suit 5 C W N 426 *Vide* 46 I A 228

(4) Application for restitution should be made to the Court of the first instance 5 C W N 425

(5) Restitution can be made when decree becomes inoperative 27 C L J 451

(6) Restitution order can be passed when the plaintiff who got the decree for land took possession thereof without executing the decree, 23 C L J 417 28 All 348

(7) This section also applies to execution proceedings, 24 C W N 50 For Limitation, see 28 Cal 113 and Art 182 of the Limitation Act

(8) For inherent power of the Court to order restitution—Read 61 P R 1917, 18 C W N 1299

**(No 35 —O IX, R. 13—Setting aside of
ex parte decree)**

How much of a decree to be set aside

Whole decree should not be set aside —

I. Where decree gives separate reliefs against different defendants

II (1) Where decree is joint and contested against some defendants, the test is if the suit could be maintained in the absence of other defendants

(2) Where some of the defendants applied for setting aside the decree and failed Vide 6 C L J 226

Note —Any part of the decree which does not affect the applicant should not be set aside I L R 31 Mad 454 but a mortgage decree should be set aside against all the defendants 13 C L J 351 P C Where decree is one and indivisible the whole decree can be set aside at the instance of one defendant 4 C W N 456

Where application to be made

(1) After appeal, an application under this rule should be made to the appellate Court, I L R 30 Mad 535 12 C L J 53

(2) Where the defendant applied under this rule to set aside *ex parte* decree, and afterwards preferred an appeal against it and the appeal was dismissed for default Held, the first Court had power to set aside the *ex parte* decree during the pendency of the appeal

But the Allahabad High Court has taken a different view—39 All. 13. 12 C. W. N. 885 affirmed on appeal in 13 C. W. N. 846 and fol. in 13 C. L. J. 221. Read also 12 C. L. J. 53.

Pendency of an appeal is no bar to an application under this rule.

(3) *When the defendant adduces some evidence and then absents—the decree is not ex-parte, and Order 2. Rule 13 does not apply, 35 Cal. 1023. Mere presence in Court premises is no appearance in the case—3 P. L. J. 355.*

(4) A defendant against whom no decree was passed cannot apply. 1 A. L. J. 470.

Note.—A fraudulent *ex-parte* decree and even a contested decree can be set aside by a suit; 14 C. W. N. 507, and 41 Cal. 990. A legal representative of the deceased applicant can prosecute the application 27 All. 574

Other Cases.

(1) Application under this rule lies when the defendant's pleader was present but had no instructions even if defence evidence was partly gone into and the suit was decreed. 5 C. W. N. 153 P. C. and 41 Cal. 956 and when the application for time was refused and the defendant's pleader left the Court; 18 C. W. N. 329 F. B. = 5 C. L. J. 247 = 34 Cal. 403.

(2) Decree after striking out defence is not *ex-parte*. 2 C. W. N. 676.

(3) *Ex-parte* decree against a minor when no guardian is appointed should be set aside. I. L. R. 24 All. 383 F. B.

(4) If there is no proper service of summons on the minor—mere fact of the guardian being aware of the case is immaterial. 3 C. W. N. 261 = I. L. R. 26 Cal. 267.

(5) (1) *No suit lies to set aside a decree merely on the ground of non-service of summons. 37 Cal. 197.*

(6) But if the suit was based on fraud—*suit lies to set aside the decree.* 21 Cal. 605.

(7) If the very fraud alleged is enquired into under this rule and the application is rejected, no suit will again lie. 20 C. W. N. 845, 822

(8) If the official guardian of the minor defendant did not defend—no application on behalf of the minor will lie under this rule for setting aside the *ex-parte* decree unless there was fraud—9 Bom L R 1049.

(9) If after the passing of an *ex parte* decree the defendant dies, his representative cannot apply under this rule unless the plaintiff has brought him on record I L R. 28 Mad. 361, 21 All 274 *Contra.* I L R 29 Cal. 33

(10) This rule applies where Court finds that an alleged compromise was not actually entered into by the defendant and the defendant was not served with summons. 3 C L J 158

(11) Where application by one defendant is dismissed, suit cannot be restored as against him on subsequent application of another defendant I. L R. 25 Cal 155 distinguished, 3 C. L J. 160

(No. 36—O. IX, R. 9)

(1) It is no appearance when the plaintiff's pleader had instruction only to apply for adjournment which was refused In such a case application under this Rule can be made I L. R. 22 All 66, *but see* also 8 C. W. N. 97

(2) The order of dismissal can be reviewed without an application under this rule I L R 26 Cal. 598.

(3) An application for execution dismissed for default cannot be revived under this rule. I. L R. 18 Bom. 429. “

(4) Notice of this application must be served on the opposite party

(5) A party if present in Court is considered to have appeared

(6) Appearance by pleader not duly instructed is no appearance—20 All 105—see *Contra* 33 Bom 475

(7) A plaintiff left the Court when a part heard case was being heard and did not turn up shortly until after the case was taken up and dismissed the Bombay High Court refused to restore the case 13 Bom 12

(8) If a case for setting aside a sale is dismissed this rule may be invoked for restoration 19 C W N 758 see *Contra* 19 C W N 25 I L R 41 Cal 1, 4 Pat Law J 330

(9) This rule does not apply to Probate Cases 14 C W N 924

(10) Every Court has the inherent power to restore a case to file if the ends of justice so require —17 C W N 829 *Contra* 20 C W N 819

Note—Order refusing to restore a sale set aside case dismissed for default—is not appealable See—19 C W N 25

(No 36 (a) Order IX—Rule 4)

(1) Dismissal under this rule is not a decree but an order and therefore the order is not appealable

(2) Dismissal due to *bona fide* mistake is ground for restoration 3 Bom H C O C 60

(No 37—Order XIII R 7)

This application is made on plain paper and no Court fee is required

(No 38—Application for possession by auction purchaser)

The Court puts the purchaser to possession of property sold at auction

APPENDIX

TO PART II.

MODELS

OF

All applications referred to

IN

PART II.

NB Important rulings bearing on the applications will be found on referring to the corresponding number of petitions in Part II

CHAPTER II

MODELS

No 1 Application for verification of a plaint by the plaintiff's agent

Order VI—R 15

In the Court of the Munsif of Alipore,
Dist 24 Perganas

Rent suit No 39 of 1927

Plaintiff

Defendant

The humble petition of

Most respectfully sheweth —

1 That your petitioner filed the above suit for recovering arrears of rent on

2 That your petitioner's *Gomostha* Babu is intimately acquainted with the facts of the case and is consequently the fit person who can sign the verification to the plaint in the above case

3 That your petitioner accordingly considers it essential that the plaint in question should be verified by his *Gomostha*

Your petitioner therefore prays that his *Gomostha* may be permitted to sign the verification to the above plaint

And your petitioner as in duty bound shall ever pray

No 2 Application for attachment or arrest before judgment (Or XXXVIII, R 5)

In the Court of Subdivision or District
In the matter of S N of the year

Plaintiff

Vs

Defendant

The humble petition of _____ plaintiff in
the above case

Most respectfully sheweth —

1 That your petitioner has instituted a suit for recovering his dues under a hand note amounting to Rs _____ and that the defendant having come to know of the institution of the suit is trying to dispose of his only property which is a house standing on a plot of land described in Schedule A of this application with a view to defeat payment under the decree that may be passed against him

2 That if the defendant sells out the aforesaid house the plaintiff your present petitioner will be left without any means of realising the decretal amount of the present suit

3 That your petitioner hereby craves leave to annex hereto an affidavit sworn by him of the facts herein set forth

In these circumstances, your petitioner prays (i) that the aforesaid house of the defendant be attached conditionally pending defendant's showing cause as to why he should not deposit the entire decretal amount together with costs of the suit or furnish security and (ii) that should he fail to shew satisfactory cause the conditional order of the attachment may be made absolute and ordered to remain in force till the disposal of the suit [In the above nature of case prayer for arrest before judgment may also be made]

And your petitioner as in duty bound shall ever pray

No 3 Application for summoning witnesses (Or VI R 1)

[Heading as in the petition no 1]

The humble petition of _____ plaintiff or
defendant in the above case

Most respectfully sheweth —

That your petitioner requires the testimony of the gentlemen (or persons) whose names and addresses are given below, for establishing his case

Your petitioner accordingly prays that your Honour may be graciously pleased to order summonses to issue for appearance of those witnesses in Court

And your petitioner as in duty bound shall ever pray

1 Mr	Profession	Address	P S —
			Diet money Rs

2

No 3 (a) Application for issue of a warrant of arrest against an absent witness

[Heading as in application No 1]

1 That your petitioner's witness Mr _____ of village _____ did not appear in court although duly summoned to do so

2 That the above named witness is a material witness in your petitioner's case as he attested the execution of the mortgage bond on which your petitioner's case is based

3 That your petitioner craves leave to file along with this petition an affidavit sworn by himself as to the truth of the allegations herein made

No 7 Application for execution of decree by another Court (Or XXI R 6)

Draw up an application as in no 6 but in column 10 note as follows —

Judgment debtor has no property within the jurisdiction of this Court from which the decretal sum can be realised, but that the said judgment debtor has property mentioned in the *Schedule* within the Jurisdiction of the Court of the Sub judge Shahabad in the District of Shahabad So the D H prays that certificate for execution of the decree be sent to the Dist Judge of Shahabad for transmission to the Sub judge Shahabad with a copy of the decree as prayed for so that the decree may be executed by the said Court

Schedule :—

Note —An application to the above effect should be filed with the application for execution If execution is sought to be taken in a Court within the same District the certificate will be sent direct to that Court Decree holder is then required to apply for execution to the Court to which the certificate is sent

No 8 Petition of claim to attached property Or XXI R 58

(Heading as in petition No 1)

Applicant

Opposite party

1 Decree holder

2 Judgment-debtor

The humble petition of the above named applicant Most respectfully sheweth —

1 That the three plots of land measuring about described in *Schedule A* of this petition have been attached in execution of a decree obtained

by the D H against the above named Judgment debtor
in execution case no _____ of the year _____
of your Honour's Court

2 That your petitioner has title to and possession of the aforesaid three plots of land and that they have been in use and occupation of your petitioner for over 12 years

3 That the Judgment debtor had never any colour of title to or possession of the above land

In the above circumstances, your petitioner prays that the order of attachment herein referred to be vacated on taking adequate proof from your petitioner and the decree holder And your petitioner as in duty bound shall ever pray

Schedule A

Description of the property attached

N B—No claim can be preferred when property is advertised for sale in execution of a mortgage decree, or a rent decree (in Bengal)

Verification

No 9 Application to set aside sale on deposit
(Or XXI R 89)

[Heading as in petition no 1]

<i>Applicant</i>		<i>Opposite party</i>
(1) Judgment debtor	1	Decree holder
	2	Auction purchaser

Re Execution case no _____ of _____
The humble petition of _____ Judgment debtor
in the above Case
Most respectfully sheweth

1 That in the money execution case no _____ of 1927 the above named decree holder had a plot

of land measuring about and belonging to your petitioner sold in execution of a decree of this Court on for Rs and that the said property was purchased by on

2 That your petitioner has deposited decree holders dues amounting to Rs together with the prescribed 5 per cent as compensation in Court

3 Your petitioner accordingly prays that the sale be set aside after due service of notice to the auction purchaser And your petitioner as in duty bound shall ever pray

Note—It is necessary to serve notice on the auction purchaser if he is not the decree holder and the deposit shall be made within 30 days from the date of sale

**No 10 Application for setting aside a sale
(Or XXI R 90)**

			Opposite parties
1	Applicant	1	Auction purchaser
		2	Decree holder
		3	Judgment debtor

Re M Execution case no of 1929

The humble petition of the above named applicant
Most respectfully sheweth —

1 That the sale held in execution of the decree in the above case on 1927 should be set aside on the following amongst other grounds —

(a) That your petitioner purchased permanent leasehold right in the property sold in execution of the above decree from the Judgment debtor on the day of of the year by a registered instrument and has been cultivating the same since that date

(b) That though mutation of names was not effected in the office of the landlord of the property sold your petitioner is bound by the decree and that your petitioner's interest in the property will be materially affected in the event of the sale not being vacated

(c) That the decree holder did not attach or publish the sale proclamation on the land by beat of drum as he should have done under the law and that he fraudulently suppressed all the processes and that the whole execution proceeding is accordingly nothing better than a mere paper transaction

(d) The present day value of the property sold would be about Rs 2000 but the decree holder intentionally put the value of the property as low as Rs 50 with the manifest motive of fraudulently putting off intending bidders

(e) That the property in question would have fetched a much higher bid, had the sale proclamation been published properly and publicly and had not the price been put so ridiculously low

(f) That for the aforesaid acts of fraud and fraudulent suppression of all the processes by the decree-holder the property has been sold at a very low price, and as a result your petitioner has been put to much loss

(g) That the present state of things has been brought about by the collusive suppression of processes etc at the instance the opposite parties, the decree-holder and the auction-purchaser

(h) That your petitioner has besides come to know that the decree-holder in collusion with the auction-purchaser started spreading false rumours regarding defect of title and smallness of income of the

property at the time of the sale and thereby dissuaded intending bidders from offering higher value.

(r) That the whole transaction of the sale being tainted with fraud, your petitioner had not any the least knowledge of the same That it was on the that he came to know about the sale and consequently the present petition is not barred by limitation

Your petitioner accordingly prays that your Honour may be graciously pleased to pass orders vacating the sale and allowing costs to your petitioner

And your petitioner as in duty bound shall ever pray

No 11 Application for determining questions in Execution proceedings (Sec. 47 C. P. C)

[Heading as in no 1.]

Applicant Vs . ..Opposite party.

The humble petition of the above-named applicant Most respectfully sheweth.—

1 That your petitioner paid the entire decretal amount due under the above decree to the opposite party on and that the said opposite party fraudulently suppressing the fact of the aforesaid payment applied for execution of the said decree and attached a plot of "*Debutter*" land measuring about

2 That your petitioner further begs to add that the property attached is Debutter property of idol Gopinath Jew and that your petitioner is in possession of the same as a sebat of the said idol and that the said

property is accordingly not liable to be attached and sold in execution of a decree against your petitioner

3 In the above circumstances your petitioner prays that your Honour may be graciously pleased to vacate the order of attachment after taking evidence in support of the allegations made herein

And your petitioner as in duty bound shall ever pray

No 12 Application by Auction purchaser to set aside sale on the ground of Judgment debtor having no saleable interest in the property
(Or XXI R. 91)

[Heading as in No 1]

1 That the property which was sold in Money Execution Case No of the year of this Court was purchased by your petitioner on for Rs

2 That your petitioner on subsequent enquiries has come to know that the judgment debtor had no saleable interest whatsoever in the said property

3 That your petitioner accordingly, acquired no title to the property he purchased at auction and has consequently been put to great loss

In the circumstances your petitioner prays that an order may be passed for setting aside the sale referred to above after service of notices upon the judgment debtor and the decree holder

And your petitioner as in duty bound shall ever pray

No 13 Petition of claim after delivery of possession
(Order XXI R 101)

[Heading as in No 1]

1 That your petitioner was dispossessed from a plot of land measuring and described in

Schedule A annexed hereto by the decree holder in execution of a decree in execution case No of the year (or by the auction purchaser to whom the property was sold in execution of a decree in execution case No of as the case may be)

2 That the aforesaid plot of land belongs to your petitioner who is entitled to get back possession thereof on the following amongst other grounds —

(i) That the property had been in the use and occupation of the judgment debtor, and that it was sold to your petitioner by the said judgment debtor by a registered instrument for a sum of Rs on the day of of the year , and that your petitioner has been enjoying the property since the date of purchase for over and paying rent for the same to the superior landlord

4 That ever since your petitioner's purchase referred to in the last foregoing para the judgment debtor never had any colour of title to or possession of the land in question and that being thoroughly apprised of the whole affair, the opposite party has wilfully and unlawfully dispossessed your petitioner from the land in question

In the circumstances stated above your petitioner prays (a) that your petitioner may be restored to possession of the land after service of notice on the opposite party (b) and that your petitioner may be awarded all legitimate costs of the proceeding

And your petitioner as in duty bound shall ever pray

Schedule (A) (Boundary of the land)

North	South	East	West
-------	-------	------	------

**No 14 Application for relief in case of resistance
offered to decree-holder's possession of property
(Or XXI R 97)
[As in No 1]**

1 That your petitioner obtained a decree for possession of the land described in *Schedule A* after declaration of his title thereto in Title suit No of year of your Honour's Court

2 That your petitioner put in a petition for execution of the decree for getting of possession of the said plot of land and a peon was deputed for delivering possession

3 That the opposite party offered resistance to the Court Peon who had been deputed for delivering possession to your petitioner and did not allow your petitioner to be put into possession of the land

4 That the opposite party never had any title to or possession of the land in question, and that the judgment-debtor in collusion with the opposite party is standing in the way of your petitioner's getting possession of the land

In the circumstances your petitioner prays that your Honour may be graciously pleased to pass necessary orders after due service of notice on the opposite party

And your petitioner as in duty bound shall ever pray.

**No 15 Application by Legal representative for substitution after death of a party. (Or. XXII R 2)
[As in No. 1]**

That the plaintiff in the above suit having died intestate your petitioner, who is son of the deceased plaintiff has become his legal representative

In the circumstances your petitioner prays to be substituted in place of the deceased plaintiff and for permission to proceed with the original suit.

And your petitioner as in duty bound shall ever pray

Verification

The statement made in the above petition is true to my knowledge and belief and that I put my signature hereto at my place of residence at p m On the day of . . . of the year

NB—This application is the application for substitution must be made within the period prescribed by law (three months) or else the suit would abate See 26 C W N 171 notes 11 C W N 504

See Schedule 1 Art 176 of the Limitation Act which fixes the period for substitution at 3 months The Court may require that this application be supported by an affidavit

15 (a) Another form

That your petitioner who is the plaintiff in the above case instituted this suit against . . . who was the original defendant.

That your petitioner has come to know that the said defendant died on the . . . date and that all his properties have vested in his son . . . of village P S . . . as his sole heir and legal representative

In the circumstances your petitioner prays for substitution of the aforesaid heir and legal representative of the defendant in place of the deceased defendant.

And your petitioner as in duty bound shall ever pray.

[*NB*—Vide note to the last petition]

**No 16 Application for withdrawal of a suit or
abandonment of a part of the claim
(Or. 23, R 1.)**

[As in previous petitions]

1 That the pleader's clerk who wrote out the
plaint of your petitioner inadvertently forgot to
mention the quantity of the land in suit as also to
put in a prayer for possession of the suit land in
the plaint

Your petitioner accordingly prays that he be
permitted to withdraw from the present suit with per-
mission to institute another suit in the proper form

And your petitioner as in duty bound shall
ever pray

N B—The Court generally does not allow withdrawal of a
suit with permission to start another suit unless cogent reasons
are put forward as grounds for withdrawal See I L R 41
Cal 388 and 44 I L R Cal 425 It is not open to the defendant
to raise any objections as to the propriety of the permission to
institute a fresh suit when such permission has already been
granted and the plaintiff acting upon that order has started a new
suit 24 C W N 723 F B

**No 16(A) Application for abandonment of a part
of the claim**

[As in No 1]

That your petitioner hereby craves leave to
abandon Rs out of his total claim of Rs
as the defendant is too poor and there is hardly
any chance of any money being realised from him

Your petitioner, therefore, prays that the plaint
be amended in the light of the present petition for
abandonment of a portion of the claim

And your petitioner as in duty bound shall ever pray

**No 17 Application for compromise
(Or XXIII R. 3)**

[Heading as in No 1]

1 That your petitioner- is the plaintiff
and your petitioner is the defendant in the
above suit 7/

2 That your petitioners have agreed between
themselves to have the case settled on terms mutually
agreed upon

3 That there is no necessity of the case being
tried In the circumstances your petitioner prays that
the suit be decreed in terms of the compromise
embodied in Schedule A of the present petition

And your petitioner as in duty bound shall
ever pray

Schedule (A)

(Terms of Compromise)

1 That the plaintiff will get possession of half of
the suit land bounded on the north south
East West

2 The defendant will pay the plaintiff Rs
as rent of the remaining moiety of the suit land

3 That the defendant shall further pay the
plaintiff Rs towards the cost of the suit

**No 18 Application by defendant to deposit money
in satisfaction of claim before Judgment.**

(Or XXIV R 1)

[As in No 1]

That your petitioner intends to deposit the entire
amount claimed by the plaintiff in the above suit

**No 16 Application for withdrawal of a suit or
abandonment of a part of the claim
(Or 23, R 1)**

[As in previous petitions]

1 That the pleader's clerk who wrote out the
plaint of your petitioner inadvertently forgot to
mention the quantity of the land in suit as also to
put in a prayer for possession of the suit land in
the plaint

Your petitioner accordingly prays that he be
permitted to withdraw from the present suit with per-
mission to institute another suit in the proper form

And your petitioner as in duty bound shall
ever pray.

N B—The Court generally does not allow withdrawal of a
suit with permission to start another suit unless cogent reasons
are put forward as grounds for withdrawal See I L R 44
Cal 388 and 44 I L R Cal. 425 It is not open to the defendant
to raise any objections as to the propriety of the permission to
institute a fresh suit when such permission has already been
granted and the plaintiff acting upon that order has started a new
suit 24 C W N 723 F B

**No 16(A) Application for abandonment of a part
of the claim**

[As in No 1]

That your petitioner hereby craves leave to
abandon Rs out of his total claim of Rs
as the defendant is too poor and there is hardly
any chance of any money being realised from him

Your petitioner, therefore prays that the plaint
be amended in the light of the present petition for
abandonment of a portion of the claim

And your petitioner as in duty bound shall ever pray

**No 17 Application for compromise
(Or XXIII R 3)**

[Heading as in No 1]

1 That your petitioner— is the plaintiff
and your petitioner is the defendant in the
above suit

2 That your petitioners have agreed, between
themselves to have the case settled on terms mutually
agreed upon

3 That there is no necessity of the case being
tried In the circumstances your petitioner prays that
the suit be decreed in terms of the compromise
embodied in Schedule A of the present petition

And your petitioner as in duty bound shall
ever pray

Schedule (A).

(Terms of Compromise)

1 That the plaintiff will get possession of half of
the suit land bounded on the north south
East West

2 The defendant will pay the plaintiff Rs
as rent of the remaining moiety of the suit land

3 That the defendant shall further pay the
plaintiff Rs towards the cost of the suit

**No 18 Application by defendant to deposit money
in satisfaction of claim before Judgment.**

(Or XXIV R 1)

[As in No. 1]

That your petitioner intends to deposit the entire
amount claimed by the plaintiff in the above

and prays that he may be permitted to deposit the entire amount of claim of the plaintiff with costs and that the said amount when deposited, be entered in the register in full satisfaction of the plaintiff's claim and costs in the suit.

And your petitioner as in duty bound shall ever pray.

No. 19. Application for examination of a witness on Commission. (Or. XXVI. R. 9)

[As in No. 1.]

1. That Sreemoti... ..wife or widow of of village . . . P. S. . . is a material witness for your petitioner.

2 That the said Sm. . . is a *pardanashin* lady and it is contrary to social custom and usage for her to appear before the public

3. That your petitioner craves leave to file along with this an affidavit in support of the statements made herein.

Your petitioner accordingly prays, that your Honour may be graciously pleased to order examination of the said witness by a commissioner to be appointed by the Court.

And your petitioner as in duty bound shall ever pray

N.B.—For form of affidavit see the Chapter relating to affidavits in Part II (B) The requisite fee of the Commissioner and his travelling expenses have to be deposited in Court.

No 20 Application for issue of a Commission for Local investigation (Or. XXVI. R. 9).

(Heading as in No. 1) *

1. That the land in suit appertains to Mouja Rampur of Sahabad Collectorate Touzi No.

owned by plaintiff petitioner and that the disputed land does not appertain to defendant's Touzi No as alleged by the latter

2 That the said point cannot be ascertained unless the disputed land is measured by a commissioner and relayed with reference to the Revenue Survey maps of the plaintiff's and defendant's Mouja. Besides there is dispute about the area of the land and for this purpose survey of the land is necessary

So the petitioner prays that the Court be pleased to pass an order for appointment of a Commissioner who will measure the disputed land and prepare its plan showing the area and also report after relaying the Revenue Survey maps as to what Mouja the suit land appertains

And your petitioner as in duty bound shall ever pray

NB—An affidavit to the above effect should be filed with the application. This application should be made shortly after filing of the written statement

No 21 Application for appointment of a guardian of a minor defendant

[Heading as in No 1]

1 That defendants Nos 2 and 3 of the above suit are minors

2 That the said minors have a mother named who is the natural guardian of their persons and property. That the said mother of the minors is the only fit person to represent the minors in this suit

3 That the said mother has no interest in property in suit adversely to that of the minors

Your petitioner therefore, prays that Sreemoti .. mother of the minors defendants Nos 2 and 3 be appointed guardian *ad-litem* of the said minors for representing them for purpose of this suit after service of due notice on her

And your petitioner as in duty bound shall ever pray

N B—An affidavit in support of the petition has generally to be filed along with the petition. If the guardian does not make appearance in response to the notice served upon him or her, an officer of the Court or a pleader is appointed by the Court to act as guardian *ad litem* of the minor

No 22. Application by a next friend or Guardian of a minor party for permission to compromise a case. (Or XXII R 97)

[Heading as in No 1]

1 That your petitioner is of opinion that the above case had better be compromised in the best interest of the minor

2 That your petitioner craves leave to file along with this a copy of the petition containing the terms of compromise for favour of your Honour's perusal and approval

That your petitioner, therefore, prays that your Honour may be graciously pleased to look into the terms of the proposed compromise and should Your Honour find the terms beneficial to the interests of the minors, Your Honour may be pleased to grant permission to your petitioner to compromise the suit on the aforesaid terms

And your petitioner as in duty bound shall ever pray

No 23 Application by a pauper plaintiff for permission to sue as a pauper (Or XX II R. 1 [Heading as in No 1]

[After drawing up an ordinary plaint add the following]

1 That your petitioner has no property beyond those mentioned in *Schedule A* worth Rs 8 or so wherefrom to meet the costs of Court fees to be paid on the plaint of the present suit

2 That your petitioner has not entered into any settlement with any body else regarding his properties

3 That your petitioner has not transferred any portion of his property to any body

4 That your petitioner has no means of paying Court fees of this suit

Your petitioner therefore prays that he may be permitted to prosecute the suit *in forma pauperis*

And your petitioner as in duty bound shall ever pray

Schedule A.

(List of properties of the petitioner)

1	Trunk—value	Rs	2/-
2	3 pieces of old cloths	,	3/
3	Utensils worth	,	3/-

TOTAL RS 8/

Verification.

That the statements made in the above petition are true to your petitioner's knowledge

NB—The application has to be ordinarily presented by petitioner in person The Court examines the petitioner

4 That your petitioner if he succeeds in this suit will find it really a hard business for him to realise from the defendant who is in straitened circumstances his dues in respect of *mesne profits*

That your petitioner is filing along with this an affidavit in support of the statements made herein

Your petitioner accordingly prays that a Receiver may be appointed by the Court for managing the estate under partition till the final disposal of the suit

And your petitioner as in duty bound shall ever pray. (An affidavit has to be filed in support of this petition.)

No 27. Application for appointment of an Arbitrator for deciding a case (Sch II, R. 1)

In the Court etc

T S No. .. of .

Plaintiff

Defendant

1. Your petitioners who are plaintiffs and defendants in the above suit have agreed among themselves to refer the matter in dispute in the said suit to arbitration, and that with that end in view your petitioners have chosen three gentlemen of position belonging to their village to be their arbitrators

2 The names, addresses and particulars of the aforesaid arbitrators are given in the *Schedule*.

3 Your petitioners here crave leave to mention that your petitioners shall be bound by the decree that may be passed in terms of the award that may be filed by the aforesaid arbitrators or a majority of them after taking evidence in respect the claim

Your petitioners accordingly pray that the gentlemen mentioned herein be appointed arbitrators and that the records be sent to the first named gentleman

in the *Schedule* after fixing a date for filing the award

And your petitioner as in duty bound shall ever pray

[Schedule.]

N B—Copies of plaint and written statement and postage for transmission of papers to the arbitrators have to be deposited in Court when ordered to do so

No 28 Application for stay of execution (Or XXI, R 26, and or XLI, R 5)

[Heading as in No 1]

1 Your petitioner has decided to prefer an appeal against the decision of this Court in Money suit No _____ of the year _____ disposed of on _____

2 The period for filing an appeal is not yet over and your petitioner's fervent belief is that his contentions in the suit under reference may be upheld in appeal

3 Your petitioner's information is that the Judgment creditor is trying to attach his dwelling house in execution of the decree referred to before

Your petitioner accordingly prays that execution of the decree in question be stayed on your petitioner's furnishing adequate security to your Honour's satisfaction

And your petitioner as in duty bound shall ever pray

An affidavit in support of a petition of this description should be filed

N B—After an appeal is preferred the application for supported by an affidavit should be made in the appellate Co

No 29 Application for adjournment of a case (Or XVII, R 1)

In the Court etc

Plaintiff

Defendant

The humble petition of the plaintiff etc.

1 The defendant in the above suit has filed written statement

2 It is necessary for your petitioner to have a copy of the said written statement Your petitioner also has to cite witnesses to meet the defendant's case

Your petitioner, therefore prays that he may be given a fortnight's time to enable him to get the copy of the written statement as well as to cite witnesses

And your petitioner as in duty bound shall ever pray

Another form

1 Your petitioner's witness Mr is laid up with fever and consequently has not been able to attend Court to day

2 Your petitioner considers it essential that the above witness be examined in this case and your petitioner is filing along with this an affidavit in support of his statement

Your petitioner therefore, prays that he may be allowed an adjournment of 15 days by which time your petitioner's witness is expected to recover

And your petitioner as in duty bound shall ever pray

NB—Adjournment costs ordered by the Court may be paid either to the pleader of the other side or deposited in Court

**No 30 Application for review of Judgment
(Or XLVII, R 1)**

In the Court of etc [Description etc as in No 1]

Plaintiff

Defendant

The humble petition etc

The Court was pleased to dismiss the above suit on
and your petitioner prays for a review of the
said judgment and decree on the following amongst
other grounds

Grounds

(a) That Your Honour was pleased to hold that
the above suit was barred by limitation and that
this was very likely due to oversight as it appears
that Your Honour was pleased to believe the story
of payment of Rs made on As a
fresh period of limitation was started from the said
date of payment the claim of your petitioner could not
have been barred by limitation

(b)

(c)

In the circumstances stated above your peti-
tioner prays that the judgment and decree may be set
aside on a review of the case [and make such
other prayer as may be necessary]

And your petitioner as in duty bound shall
ever pray

**No 31 Application for amendment of plaint
(Or VI R 1)**

[Description etc as in No 1]

The humble petition of plaintiff in the above
case Most respectfully sheweth —

1 That there is a mistake in calculating the
amount due on the bond in the plaint and that it

appears on a proper calculation as given in the Schedule annexed to this petition that your petitioner is entitled to Rs 441 and not Rs 328 as stated in the plaint from the defendant

2 That your petitioner will be put to considerable loss if the said mistake be not corrected

Your petitioner prays that the plaint may be amended by inserting in it the correct amount due as given in the Schedule and that this petition may be made a part of the plaint Your petitioner undertakes to pay the deficit Court fees which will be required on the amendment being allowed

**Schedule shewing the correct amount due from
the debt**

And your petitioner as in duty bound shall ever pray
[Verification]

No 32 Application for amendment of a decree.

In the Court etc

Plaintiff

Defendant

The humble petition of etc

1 Your petitioner obtained a decree for Rs in money suit No of but while drawing up the decree the decretal amount was through mistake put at Rs

Your petitioner accordingly prays that this mistake in the decree may be amended

And your petitioner as in duty bound shall ever pray

**No 33 Application for exercise of the inherent
powers of the Court (Sec 151)**

In the Court etc

Plaintiff

Defendant

The humble petition etc

Your petitioner begs to state that the 3rd of June last was fixed for hearing of the above case but that

the Bench Clerk through mistake put up the case before Your Honour on the day preceeding and as a result of this mistake on the part of the Bench clerk the suit in question was dismissed for default a day earlier

Your petitioner therefore prays that Your Honour may be graciously pleased to restore the case to file by exercising inherent power under Sec 151 of the C P Code

And your petitioner as in duty bound shall ever pray

**No 34 Application for restitution of property
after a decree is varied or reversed in appeal
(See 144 C. P Code)**

In the Court etc [as in No 1]

Petitioner

Opposite party

The humble petition etc

1 Your petitioner preferred an appeal against the Judgment and decree passed by this Court in Title suit No of and in the said appeal the judgment and decree of this Court have been set aside and the suit for recovery of possession of the property has been dismissed

2 The opposite party applied for execution of the decree of the first Court and got possession of your petitioner's property described in *Schedule A* annexed hereunto

Your petitioner craves leave to attach hereto a certified copy of the Judgment of the Appellate Court

Your petitioner, in the above circumstances prays that Your Honour may be graciously pleased to pass

orders calling upon the opposite party to restore your petitioner to the possession of the said property and to pay the amount that the said opposite party might have received from the property as its usufruct with interest at 6 *P C P A*

And your petitioner as in duty bound shall ever pray

Schedule of the Property

No 35 Application for setting aside an *Ex parte* decree

In the Court etc

Applicant

Opposite party

The humble petition etc

The plaintiff opposite party in the above case obtained an *ex parte* decree against the applicant on _____ and the applicant begs to state that the said *ex parte* decree should be set aside on the following amongst other grounds —

1 That the plaintiff fraudulently suppressed service of summons as a consequence of which the applicant did not come to know anything about the institution of the suit

2 The applicant came to know about the fraud practised upon him by the opposite party on _____ from Mr _____ on _____

3 The applicant would certainly have attended the Court on the date fixed for the case if he had knowledge of the suit and had not the opposite party suppressed service of summons under an apprehension that it would be hard for him to get a decree for his false claim should the case be contested

4 That your petitioner has sustained injury by the passing of the *ex parte* decree against him [*State the nature of injury*]

Your petitioner accordingly prays that the above decree be set aside and the suit be restored to file

And your petitioner as in duty bound shall ever pray

[A B State also in the petition a brief account of your defence
i.e. denial of bond or title or plea of payment etc]

No 36 Application for setting aside an order of dismissal (Or IX, R 9 and 4)

In the Court etc

Plaintiff

Defendant

The humble petition etc

1 That the above case was fixed for hearing
on .

2 That your petitioner was suddenly taken ill
of high fever on that date and consequently could
not attend Court

3 That on account of your petitioner's absence
on the date fixed the suit was dismissed for default

4 That as result of the suit having been dismissed
for default your petitioner has sustained great loss

In the above circumstances your petitioner prays
that the above case be restored to file after taking
such evidence as may be adduced by your petitioner
And your petitioner

No 37 Application for Returning of documents (Or IX, R 7)

Plaintiff

Defendent

Suit No of 19 .

The humble petition etc ..

1 Your petitioner filed the documents mentioned
in the *Schedule* attached hereto in the above suit

2 The above suit was finally disposed of on . . .

Your petitioner prays that the documents mentioned in the *Schedule* be returned to him

And your petitioner as in duty bound shall ever pray

NB—Documents filed in a suit are not returned if an appeal against the Judgment of the original suit be pending The Court may in such a case order the documents to be returned on the party s furnishing certified copies and on giving an undertaking to refile the original documents in the appellate Court if necessary

No 38 Application by auction purchaser for possession of land (Or XXI, R 95)

Applicant

Opposite parties

- 1 A. B Decree holder
- 2 C D Judgment debtor

The humble petition etc

1 Your petitioner purchased the property covered by the sale certificate filed along with this in Money Execution Case No of for Rs
on

2 The above sale was confirmed and made final
on

Your petitioner therefore, prays that Your Honour may be graciously pleased to put your petitioner to possession of the property through Court
Verification

PART II (A)

Law and Procedure

UNDER

The Bengal Tenancy Act

WITH

Copious Notes and Rulings

AND

**A list of important applications filed under
the different sections of the B. T. Act
with notes.**

***N.B.*—[Models of Plaints and Petitions under
the B. T. Act have been given
in the Bengali Appendix.]**

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Your petitioner prays that the documents mentioned in the *Schedule* be returned to him

And your petitioner as in duty bound shall ever pray

N B—Documents filed in a suit are not returned if an appeal against the Judgment of the original suit be pending The Court may in such a case order the documents to be returned on the party s furnishing certified copies and on giving an undertaking to refile the original documents in the appellate Court if necessary

No 38 Application by auction-purchaser for possession of land (Or XXI, R 95)

Applicant

Opposite parties

1 A. B Decree holder

2 C D Judgment debtor

The humble petition etc

1 Your petitioner purchased the property covered by the sale certificate filed along with this in Money Execution Case No of for Rs on

2 The above sale was confirmed and made final on

Your petitioner, therefore, prays that Your Honour may be graciously pleased to put your petitioner to possession of the property through Court

Verification

PART II (A)

Law and Procedure

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in the Bengali Appendix.]

1 2

PART II (A).

CHAPTER I.

Procedure under the Bengal Tenancy Act Plaint in Rent Suits

(1) Under section 148 of the Act the plaint shall contain, in addition to the particulars specified in the C P Code Order VII, Rules 1, 2, 4, 5 and 6 a statement of the situation designation, extent and boundaries of the land held by the tenant, or where the plaintiff is unable to give the extent or boundaries, in lieu thereof, a description sufficient for identification

(2) If Record-of-Rights have been prepared and finally published, the plaint shall contain the plot numbers and the rent payable as recorded in the said Record-of-Rights

(3) Where an alteration has been made in the area of the tenancy since the Record-of-Rights was prepared and finally published, the plaint shall contain a statement of the rental of the original tenancy, according to the Record-of-Rights, together with a statement showing how the amount of rent claimed in the suit has been computed

Written Statement

W S shall not be filed without the leave of the Court See Sec 148, clause (e)

Suit by co-sharer landlords

A suit may be instituted by a plaintiff, co-sharer landlord, in respect of the entire *jama*, by making the other co-sharer landlords parties (*pro form*)

defendants) to the case, when the plaintiff is unable to ascertain what rent is due for the whole tenure or holding or when the plaintiff with due diligence is unable to determine what rent is due to the share of the defendant landlords. The Court in such a case will determine what rent is due to the plaintiff and what to the *pro forma* defendant landlords also and pass a rent decree accordingly. For particulars see section 148A for plaintiff see plaintiff No 2 in Bengali Part. *For particulars as to drawing up a plaint for getting a rent decree read 27 C L J 101*

If a rent decree is obtained by a co sharer landlord on a plaint which is not framed according to sec 148 A of the B T Act the decree will be in effect a money decree and not a rent decree proper 13 C W N 747 4 C L J 68

A co sharer landlord who was made a *pro forma* defendant in a previous rent suit under sec 148A but did not appear to contest the correctness of claim in that suit, is not entitled to sue the tenant for rent of the same period. Such a claim has been held to be one barred by *res judicata* 48 Ind Cas 536. Even if there be separate collection of rent by different co sharers they can jointly sue for rent of the same holding but unless all the co sharers join in the suit or the suit is framed in terms of sec 148A, the decree passed will not be a real rent decree 12 C W N 249

Detailed hints for drawing up plaints in rent suits have been given in Chap IV. Part I

Account books of landlords—how proved in cases more than one

For this see Part I, Chap. VI

Compromise of rent suits

In rent suits the provisions of Order XXIII Rule 3 of the C P Code regarding compromise do not apply

In compromising rent suits the following special rules have to be remembered —

(1) That the Court enforces that portion of the compromise which relates to the suit and no more

(2) That no decree is passed in accordance with any agreement or compromise the terms of which if embodied in a contract could not be enforced under the Bengal Tenancy Act (For rights of a tenant not affected by contract between landlord and tenant see section 178)

(3) That when the effect of a compromise is to enhance rent in a manner or to an extent not allowed by section 29 of the Bengal Tenancy Act the Court takes evidence as to the rate of rent records a finding and then enforces the compromise provided it is legal

(4) That when the compromise appears to be unfair and inequitable the Court will not enforce it unless it is satisfied by taking evidence that statements made in the compromise petition are correct (For particulars see Sec 147A)

NB—Compromise in contravention of the above provisions is void 17 C W N 496

Important rulings regarding procedure in rent suits Plaint

Suit to include whole claim

(1) Any claim which was not included in previous suit but which might have been inc

cannot be enforced in a second suit 1 C. W. N. notes cxx, and see I. L. R. 22 Cal. 691

Suit by a managing member

(2) A managing member of a Hindu family cannot maintain a rent suit in his own name without joining the other co-sharers Vide 7 C. L. J. 251.

Whether a benamdar of the landlord can sue.

(3) A benamdar cannot maintain a suit. I. L. R 25 Cal 98

Who can be sued for rent.

(i) A registered tenant 5 C, L J 89

(ii) A real tenant in possession 9 W. R. 71

(iii) No decree can be passed against any person other than the actual tenant I L R. 25 Cal 399 = 2 C W N 96

Registration of landlord's name, etc.

(1) Proprietors, managers or mortgagees of estates or of revenue-paying properties cannot recover rent without registering their names under sec 78 of Act VII, B C, of 1876

(2) A suit does not lie without giving notice of succession to permanent tenures under section 16 of the B. T Act. See sections 15 16, 17 of the B. T. Act.

Note—When a landlord has notice of such a transfer (Vide secs. 12 and 13 of the B T Act) he should sue both the transferee and the transferor for rent whether he has recognised the transfer or not—11 C W N. 217

(3) A landlord cannot get more rent than that stated by him in the Cess-Return, unless it has since been lawfully enhanced (See sections 19 and 20 of the Cess Act, Act IX of 1880, B C.)

Defence Non joinder

All the heirs of a deceased tenant should be made defendants, otherwise the rent suit is liable to dismissed—15 C W N 911 *

Denial of landlord's title and Abatement of rent, etc

A tenant inducted on to the land by a landlord can not deny such landlord's title—21 W R 153 See 1 C W N notes xxiv but a tenant can shew that the landlord's title has expired—21 W R 5

In a rent suit a tenant can claim abatement of rent for less land in his possession Vide section 52 of the B T Act Vide 30 C W N 1 P C

Note—A tenant dispossessed by landlord is not liable for rent I L R 28 Cal 183 Rent may be suspended or the tenant can get abatement—31 C W N 990 19 C W N 870

Evidence

Admission by a co-tenant as to rate of rent

Such an admission is no evidence against other co tenants 1 C W N *chiv* (notes)

Decrees of co-sharer landlords

A decree obtained by one co sharer landlord is not admissible in evidence as to the rate of rent in a suit brought by another co sharer 10 C W N 1084

* *Vide Contra* 36 I C 243 23 C W N 27 (notes) —Mookerjee J held in the case reported in 25 C W N 525 that the tenancy must be represented in its entirety before a decree can be made binding on the tenure In the recent case reported in 27 C W N 521—it has been held that as the original tenants are jointly and severally liable for rent—if all the heirs of at least one of the original tenants be made parties in the rent suit—the Court cannot dismiss the claim In such a case the decree passed is considered to be money decree

Value of collection papers

These are corroborative and not independent evidence 6 C W N 401

N B—Except where the writer of such papers is dead—*Vide* 16 C L J 24 See Chapter VII Part I

Value of kabuliyat

Oral evidence is not admissible to vary the rate of rent noted in the kabuliyat but evidence can be adduced to shew that the kabuliyat was not acted upon 6 C W N 242

Mere non payment of rent after execution of kabuliyat does not affect landlord's right to get rent 6 C L J 72

Value of *Ex parte* decree

(1) *Ex parte* decree does not operate as *res judicata* as to the rate of rent—see I L R 16 Cal 300 See also 17 C W N 627 and 13 C L J 38

(2) *Ex parte* decree if executed is some evidence as to the rate of rent *Vide* 1 C W N 120 see also 2 C L J 98 notes and 13 C L J 38

Value of Thak map

Entries in *Thak* map are good evidence 7 C W N 849

Dakhilas

Dakhilas may be proved by illiterate tenants by identifying the dakhilas obtained on payment of rent See 7 W R 15 12 W R 34 I L R 24 Cal 251

Important Miscellaneous Rulings.

Question of area—Ordinarily the question of area of lands appertaining to a holding may be left open in a rent suit but where there is substantial

dispute regarding the indentivity of the tenancy the question of area and land should be gone into even in a rent suit 10 C L J 196 1. C W N 152, 32 C W N 245 (Rankin & Mitre JJ)

Compromise.—An objection that a compromise decree under execution was not in conformity with law cannot be raised in an execution proceeding 24 C W N 1070 (*East Bengal case*)

Inter pleader suit by tenant.—A tenant cannot bring a suit for a declaration as to who among the defendants is his actual landlord 20 C L J 148 14 C W N 784

Decree against unrecorded tenant—its effect:—If the unrecorded tenant be the real tenant there will be a rent decree 16 C W N 257

Transferee of a rent decree:—If the purchaser of decree for rent did not purchase the holding as well, he cannot execute the decree as a rent decree but can execute it as money decree The authorities on the point have been collected and reviewed by Justice Mookerjee in 1 C L J 500, Read 40 Cal. 462 and 28 C. L. J. 33 notes

Transfer of holding—effect of previous rent decree:—The landlord after recognizing transferee as his tenant of the holding cannot again put up the very holding to sale in execution of a rent decree previously obtained against the old tenant 23 C. W. N 654 per Chatterjee and Newbould, JJ

Modes of execution of rent decree:—It can be executed in any way like an ordinary decree The landlord is not bound to proceed against the defaulting holding at the first instance, and the Court has no right to fetter the landlord's discretion by ordering

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Decree against unrecorded tenant—its effect —If the unrecorded tenant be the real tenant there will be a rent decree 16 C W N 257

Transferee of a rent decree —If the purchaser of decree for rent did not purchase the holding as well he cannot execute the decree as a rent decree but can execute it as money decree The authorities on the point have been collected and reviewed by Justice Mookerjee in 1 C L J 500 Read 40 Cal 462 and 28 C L J 33 notes

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Modes of execution of rent decree :—It can be executed in any way like an ordinary decree The landlord is not bound to proceed against the defaulting holding at the first instance, and the Court has no right to fetter the landlord's discretion by order

that the holding should be sold first 16 C W. N. 31 notes and 18 C L J 29

Decree obtained by a co sharer landlord:—Such a decree is in effect a money decree and not a rent decree 4 C L J 68

Decree against one of the heirs of deceased tenants—its effect:—If the suit be against some heirs of deceased tenants it is not maintainable 24 C L J 371, but in the case reported in 23 C W. N. 27 (notes) it has been held that as the liability, like a debt under section 43 of the Indian Contract Act, is joint and several the suit may be decreed against some of the tenants who are defendants in the suit Read the recent case reported in 27 C W N 511 The law on the subject has been settled by Full Bench, the case reported in 29 C W N. 1003 Read also in this connection 15 C W. N. 191, 36 I A 243 and the notes at page 269 of this book

What is an incumbrance?—Exchange is an incumbrance 23 Cal 254, and so is a mortgage or an interest created without landlords' permission

Can an under-ryoti holding and a non occupancy holding be sold in execution of a rent decree?—The former cannot be sold but the latter can Vide 16 C W N 831 and 14 C W N 814

Bequeathing occupancy right by Will:—Occupancy right cannot be bequeathed by will 18 C W. N 1294

Homestead lands:—A tenant who has acquired occupancy right, whether in the same village or not, acquires occupancy right in his homestead even if it is held under a different landlord, 4 C L J. 332.

Distrain.—Tenants' crops can be distrained only for arrears of rent and interests thereon for one

year preceeding the application for distraint 33 C L J 24

Deposit

Deposit of rent admitted to be due.

Under Sec 150, if the tenant does not deposit rent admitted to be due, in Court, the Court shall, except in special cases, refuse to take cognizance of defendant's plea

NOTE This section does not apply to a case where the rate of rent is in dispute I L R 30 Cal 947

Who is not a tenant.

Bargadar—is not a tenant 14 C. W N. 62.

Damage for use and occupation—Rent suit—relationship of landlord and tenant—if not proved.

In such a case, if there is no alternative prayer for damages for use and occupation, the suit must fail 17 C W N 311

Rent decree—suit for rent of more than one holding

Decree in such a suit is not a true rent decree—such a decree is treated as a money decree for purpose of execution, 16 C W N 395, but this kind of decree must be executed within the time limit allowed for rent decrees

Rent suit by a co sharer landlord—making other co sharers parties

Even if decree be for plaintiff's share only and if *pro forma* defendant landlords do not appear—still it is a Rent decree 15 C W. N. 820.

Res judicata in Rent suits

Ordinarily decision as to rent is not *Res judicata*—but where an issue is specially raised and decided, it operates as *Res judicata*—13 C. L. J 1. Vide also 13 C. L. J. 38

Permanent tenures—Presumption

Where the origin of the tenure is unknown—long enjoyment at fixed rate raises the presumption 15 C L J 220

Enhancement of rent at more than 2 annas in the rupee—section 29

Such an enhancement is void I L R 24 Cal 895
This section does not apply where there is *bonafide* dispute as to rent or land 11 C L J 106

Sub lease by raiyat— for more than 9 years

Such a lease is void against the landlord but not between parties to the lease 9 C L J 76

How a lease to be construed

Where terms are not clear—conduct of parties help in construction 17 C L J 411

Dispossession by landlord—suspension of rent :— where does not apply

Dispossession from a part of land—suspends rent of the entire jama—where does not apply See 9 C L J 585

Dispossession by landlord—Suit by raiyat for recovery of possession

Such a suit must be brought within 2 years—14 C L J 292

Recognition of a tenant by landlord's agent —
Unless duly authorised such recognition is not binding against the landlord 58 Ind Case 554

Whether rent paid by transferee in the name of the old tenants 'Marfatdar' or 'Guzratdar' amounts to recognition — No 23 C W N 201

**Transferability of occupancy holding—Custom—
what points should be proved**

(1) Such transfers in the locality, (2) Without landlord's consent and (3) Recognition of such transfers on receipt of the nazar fixed in the locality
15 C W N 752

**Transferability of occupancy right—Custom—
Can the Custom be of recent origin**

See 15 C W N 752 points noted before Such a custom need not be ancient but may be quite recent and in course of growth 6 Ind Cas 291

**Purchaser of tenants' interest—Possession for
12 years—Landlords' knowledge**

Such a purchaser acquires good title but his interest is voidable as an incumbrance 17 C. W N 163

Setting aside sale by deposit—Poundage fee.

Poundage fee need not be deposited under sec 174 for setting aside sale 16 C L J 542

**Who can deposit money to save Property from
rent-sale**

Unrecorded purchaser of transferable interest can make deposit under sec 174 10 C L J 473 *

**Sale of holding at rent sale—after 1st bid was
not accepted by Court—no fresh Procla-
mation—what passes**

Holding does not pass at such a sale but merely right, title and interest of J. D pass I L R 38 Cal 923

* Purchaser of a whole or part of non transferable occupancy holding can make deposit under O 21 R89 C P C 31 C. W N 1050
(This is the latest ruling)

Date of sale—What it means.

(1) Date on which the sale is held. 17 C W N. 440, *contra* date of confirmation 18 C. L. J. 170.

Rent decree against some heirs of occupancy raiyat—Sale—if other heirs bound by that.

No—13 C W N 108

**Landlord advertising a holding for sale—
Presumption.**

(1) May be transferable (2) At least occupancy holding 17 C. L. J. 652

**Execution of co-sharer landlords' decrees—
Limitation.**

Same as in case of a pure rent decree 10 C L J. 463, 18 C L J 81

Trees—Appropriation—Onus of proof.

Landlord is entitled to appropriate trees cut—tenant claiming such trees must prove custom 10 C. L J 25

**Application for settlement of rent under section
105 before a settlement officer**

A co-sharer landlord cannot apply 10 C L J 458.

Presumption as to entries in the Record-of-Rights

Such entries are presumed to be correct unless otherwise proved. 18 C L J. 76.

Declaratory suit after settlement Proceedings.

Vide sec 111A Erroneous entry—suit for declaration of status See 15 C. W. N 896

Occupancy right in Chur land.

May be acquired by persons in possession for some

years as tenant and for remainder as *jaradar* making up 12 years See 17 C W N 881

Non occupancy right—if heritable and transferable

Heritable —18 C W N 828 F B but it is not transferable

Full Bench case on the transferability of occupancy right

Points decided in 18 C W N 971

(1) Occupancy holding not transferable by custom—can be transferred

(2) Such a sale binds the vendor and all persons except the landlord unless he gives his consent to the transfer either before or after the transfer

(3) When occupancy holding is sold in execution of a money decree or transferred by the tenant —

(a) Landlord can take *khas* possession of the land if the entire holding is sold

(b) But cannot get *khas* possession if only a part of the holding is sold

(4) Purchaser is a Representative of the J D under section 47 of the C P Code

N B —Such a purchaser can deposit decretal amount before and after rent sale—31 C W N 1050

Note —Occupancy holding not transferrable by custom cannot be bequeathed by will 18 C W N 1290 1294

Occupancy holding—Whether transferable—Special Bench case on the point reported in 24 C W N 818=31 C L J 518

It has been held—

(1) That a transfer of the whole or part of occupancy holding is operative as against the r

Date of sale—What it means.

(1) Date on which the sale is held. 17 C W N 440, *contra* date of confirmation 18 C. L. J. 170.

Rent decree against some heirs of occupancy raiyat—Sale—if other heirs bound by that.

No—13 C W N 108

Landlord advertising a holding for sale—Presumption.

(1) May be transferable (2) At least occupancy holding 17 C. L. J. 652

Execution of co-sharer landlords' decrees—Limitation.

Same as in case of a pure rent decree 10 C L J. 463, 18 C L J 81

Trees—Appropriation—Onus of proof

Landlord is entitled to appropriate trees cut—tenant claiming such trees must prove custom 10 C. L. J. 25

Application for settlement of rent under section 105 before a settlement officer.

A co-sharer landlord cannot apply. 10 C L J 458.

Presumption as to entries in the Record-of-Rights

Such entries are presumed to be correct unless otherwise proved. 18 C L J. 76.

Declaratory suit after settlement Proceedings.

Vide sec 111A Erroneous entry—suit for declaration of status See 15 C. W. N 896

Occupancy right in Chur land.

May be acquired by persons in possession for some

years as tenant and for remainder as *nyadar* making up 12 years See 17 C W N 881

Non occupancy right—if heritable and transferable

Heritable —18 C W N 828 F B but it is not transferable

**Full Bench case on the transferability
of occupancy right**

Points decided in 18 C W N 971

(1) Occupancy holding not transferable by custom—can be transferred

(2) Such a sale binds the vendor and all persons except the landlord unless he gives his consent to the transfer either before or after the transfer

(3) When occupancy holding is sold in execution of a money decree or transferred by the tenant —

(a) Landlord can take *khās* possession of the land if the entire holding is sold

(b) But cannot get *khās* possession if only a part of the holding is sold

(4) Purchaser is a Representative of the J D under section 47 of the C P Code

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whether it is made voluntarily or involuntarily Mookerjee, J observed as follows — 'When voluntary and involuntary transfers are thus placed in the same category, so far as the *rayat* is concerned no difficulty can arise under sec 69 of the C P C which makes saleable in execution all property belonging to the judgment debtor over which he has disposing power

and that the measure of their liability to involuntary alienation is the power of voluntary 'alienation 24 C W N 818 at page 834 *So under the present law occupancy right can be sold in execution of a decree without the consent either of the landlord or of the tenant The tenant will be bound by the sale but it will be optional with the landlord to recognise the purchaser as a tenant*

Appeal

Appeal in Rent Suits

No appeal lies from—

(1) A decree or order passed by a District Judge or Addl Judge or Sub Judge in a suit value of which does not exceed Rs 100

(3) A decree or order in a suit valued at not more than Rs 50 when such a suit is tried by a Munsif specially empowered to try such case finally

Unless in either case the decree or order has decided a question relating to title to land or to some interest in land or between parties having conflicting claims thereto or a question of a right to enhance or vary the rent of a tenant or a question of the amount of rent annually payable by a tenant [For particulars see sec 153 B T Act]

Appeal in rent suits — Rulings

(i) Where conflicting question of title is not actually decided no appeal lies 20 C W N 967 But where the question decided is where the rent is *Noqdi* or *Bh ult*—an appeal will lie 21 C L J 487

(ii) No appeal lies where the Court does not decide rate of rent 1 C W N 711

(iii) Where the defendant sets up his own title to the rent land and the Court decides the point between the plaintiff and the defendant—an appeal will lie 25 C W N 55 (n)

(iv) No appeal lies when the only question decided is whether the relationship of landlord and tenant exists between the parties

N B—*Appeal may lie against certain orders passed in execution proceedings arising out of non appealable rent decrees* 9 C W N 721 F B*

Motion

In a case decided by a Munsif in which appeal does not lie a motion may be made to the District Judge for revision of the judgment of the lower Court [For particulars see sec 153 and I L R 15 Cal 327]

Note—(1) A munsif empowered to exercise final jurisdiction under sec 153 carries that power even after transfer It is a personal power Vide 12 C W N 448

(2) Provisions of section 153 as to appeal do not apply to suits by a co sharer landlord for his share of rent 8 C W N 472 But in the case of *Raja Promad Nath Roy v Raja Ramani Kanta Roy* 12 C W N 249 a different view has been taken

* Where a sale is set aside both under Sec 173 B T Act Order 21—R 90 of the C P Code by a specially authorised officer No appeal lies—46 C L J 172 This is the latest case on the reported on 16-8-27

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* Where a sale is set aside both under Sec 173 B T Act and Order 21—R 90 of the C P Code by a specially authorised officer—No appeal lies—46 C L J. 172 This is the latest case on the reported on 16-8-27

(3) No second appeal lies when it has been found that the relationship of landlord and tenant does not exist 8 C W N 438

(4) Provisions of section 153 as to appeals do not apply to a suit for back rent by an assignee of arrears of rent Such a suit is a money suit unless the assignee purchases the landlord's interest in the land 4 C W N 605

(5) For appeal and second appeal against an order setting aside sale in execution proceedings in rent suits valued at less than Rs 100, see 46 C L J 172 I L R 32 Cal 95 F B

(6) When defendant sets up title of the Plaintiff's landlord who is not a party to the suit no second appeal lies 8 C W N 434

Miscellaneous

Suit for ejecting an under-raiyat

See sec. 49 of the B. T. Act For form of notice and Bengali application for service of notice see Bengali Part All landlords must join as plaintiffs; see section 188 of the B. T. Act

Note—If an under raiyat transfers his holding he can be ejected 19 C. W N 43.

Suit for enhancement of rent.

For grounds on which rent can be enhanced see secs 29 and 30 of the B. T. Act All landlords must join as Plaintiffs, see sec 188 of the B. T. Act

Application for determining incidents of tenancy.

See sec. 158 of the B. T. Act and for form of Bengali application see Bengali Part.

Right of occupancy tenants not affected by contract.

See section 178 of the B. T. Act. See also "compromise of rent suits" given before

CHAPTER II.

Applications under the Bengal Tenancy Act

(1) Application for commutation of Rent payable in kind This application is made before the Collector or other Revenue officer as mentioned in section 40—(Sec 40)

(2) Application for service upon an under raiyat for ejectment (Section 49)

(3) Application for deposit of rent (Section 61)

(4) Application for surrender of holding (Section 86)

(5) Application for distraint of crops (Section 122)

(6) Application for setting aside an *exparte* decree (Section 153A)

(7) Application to determine incidents of tenancy (Section 158)

(8) Application for sale of tenure or holding (Section 162)

(9) Application by judgment debtor to set aside sale (Section 174)

(10) Application to the collector for annulling incumbrance (Section 167)

Notes — On each application are given below

(For Bengal only)

Applications under the Bengal Tenancy Act

(No 1 —Section 40)

(1) When rent is payable in kind, e.g., paddy, this application can be made

The Revenue Officer shall state in his order the date from which the new arrangement is to ——— into operation I L R 18 Cal 467

(2) Civil Court cannot question the order passed —
3 C W N 311

(3) Commutation made by an improper officer is *ultra vires* 27 C L J 569

(4) If the tenant be not an occupancy raiyat this commutation order is *ultra vires* and a Civil Court can treat the order as a nullity—21 C L J 48~

(No 2—Sec 49)

For form of Notice in Bengal see Bengal Part

(1) The notice of ejectment filed with the application shall be served as a summons otherwise the service is bad 2 C W N 125

(2) No form of notice is prescribed Suit instituted at the end of the agricultural year in which the notice is given is premature 2 C L J 107 (n)

(3) Signature of landlord in the notice is not absolutely necessary 23 C W N 76 24 C W N 44 notes

(4) There is no prescribed form for notice—28 C L J 91

Note—*Permanent lease granted by an occupancy raiyat is invalid and the under raiyat can be ejected by service of notice*—
22 C W N 179 See also 23 C W N 437

(No 3—Sec 61)

(1) A deposit of rent may be made by a tenant of *bastu* land who is a raiyat of the village under a different landlord 9 C W N 416

(2) Deposit can be made under this section if rent tendered is refused 7 C W N 720

(3) A valid tender kept good, stops running of interest even if rent be not deposited I L R 34 Cal 34 F B

(4) Deposit before rent falls due is bad in law—31 Cal 183

(5) Tenant must also deposit interest due on arrears—20 C L J 153

Note—If rent be payable in kind with a stipulation that a fixed sum would be payable in case of default then the sum fixed may be deposited in Court 19 C W N 1143

Fees For Deposit

For deposit of rent under section 61 (2) 4 annas for every such deposit of Rs 25 or less with an additional sum of as 4 for every Rs 25 or part thereof in excess is necessary provided that in no case such fee shall exceed Rs 5

(No 4—Section 86)

Fees

(1) No fee is required for service of notice of surrender filed with the application (Vide Cl 12 sec 19 Act VIII 1870 the Court Fees Act) Service on landlord need not be personal 6 C W N notes xxviii

(2) For relinquishment by one of several joint tenants see 8 C W N 315

(3) Under section 178 (3) (c) a contract to the contrary between a landlord and a raiyat cannot deprive the raiyat of his right to surrender I L R 19 Cal 790

(4) Permanent right under certain circumstances may be surrendered—19 I C 124

Note—A tenant after transferring a portion cannot surrender his entire holding He can surrender that portion which he did not transfer—25 C W N 29 F B

(No 5—Section 122)

(1) Every application for distraint shall bear a court fee stamp of 12 annas See the Court Fees Act, Sch II Art 1 Cl (b), para 2

(2) By one application crops of more than one holding cannot be distrained Application for Distraint can be made for rent and interest of the preceding year only, and not for damages I L R 28 Cal 364, See 33 C L J 24 also

(No 6 —Section 153A)

(1) The application shall contain a statement of the injury sustained The amount admitted to be due shall be deposited with the application

(2) For rulings see notes on No 35 given before—
Appendix to part I page 125

(No 7 —Section 158)

(1) The Court in such cases generally directs an enquiry by a Revenue Officer

(2) All the landlords must jointly make this application for determination of the incidents of the tenancy I L R 17 Cal 538

(3) One application cannot be made against several tenants holding separate and distinct tenures or holdings I L R 24 Cal 197—1 C W N 236,

(4) The Court cannot assess additional rent for excess lands in a proceeding under this section 6 C W N. 592

(5) The question whether a holding is transferable or not cannot be determined in this proceeding 3 C W N 15

Where there is dispute about tenancy, this section has no application 55 I C 709

Note —The scope of the enquiry is to ascertain the existing arrangements and not to make new contracts 6 C W N 562
18 C W N 466

(No 8 —Section 162)

(1) Warrant of attachment and sale proclamation are simultaneously issued Descriptions of the holding shall be fully given

(2) If application for execution is made by one decree holder notice of the same should be given to the other decree holders (see Section 158B last para)

(3) Purchaser of a holding is liable for arrears of rent due at the time of sale I L R 30 Cal 213

(No 9—Section 174)

(1) For rulings see notes on No 10 (C P C) in the Appendix to Part I

(2) Under raiyat cannot apply for setting aside sale by depositing money I L R 29 Cal 459

(3) Purchaser of a non transferable occupancy holding can not apply but the purchaser of a share of an occupancy holding transferable by custom can apply 8 C W N 55 but see 18 C W N 971 F. B and 46 C L J 172

(No 10—Section 167)

(1) Incumbrance can be annulled only by an application under sec 167 of the B T Act I L R 22 Cal 364

(2) The entries in the order sheet are not *prima facie* evidence of service of notice 7 C L J 262, *Vide* 22 C W N 788

(3) Incumbrance cannot be annulled if several holdings were sold in the same execution proceeding I L R 34 Cal 298

(4) Where incumbrancer is the purchaser—this section does not apply. 8 C W N 332

(5) Service of notice annuls the incumbrance and no separate suit is necessary I L R 25 Cal 551

(6) One of several auction purchasers cannot annul an incumbrance 1 C W N 314

(7) In a case where higher right is annulled under this section lower right vanishes *ipso facto* 17 C W N 1064 25 C W N 106

(8) Notice to avoid incumbrance must be served on all persons who claim incumbrance 18 C W N 259

Models of all these applications have been given in the Bengali Part

Miscellaneous

(1) *Substitution*—in case of death of a party must be made within 3 months

(2) *Dispossession*—plea of by tenant—Entire Rent is not suspended—where rate is fixed per *bigha* or *acre*—in such a case—rent should be apportioned—31 C W N 990 (*Latest case*)—Vide the Privy Council case—reported in 30 C W N 1 Vide also 19 C W N 870

(3) *Limitation*—in a case for setting aside sale—where fraud is proved—Vide I L R 48 Cal 119

(4) *Res judicata*—as to rate of rent—*Ex parte decree*—Vide 13 C L J 38

PART II (B).

Hints for Drawing up

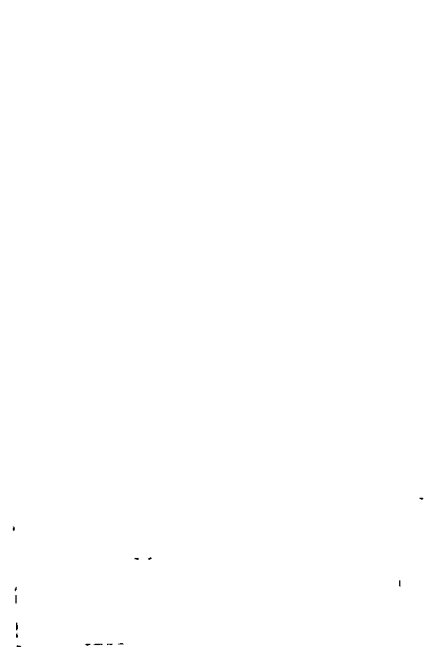
AFFIDAVITS

WITH

Models of Affidavits ordinarily filed

— IN —

CIVIL COURTS.



PART II (B)

CHAPTER I.

Affidavits

The affidavit shall contain the name of the Court, names of parties to the suit, or proceeding, number and year of the case, if there be no case, the affidavit should be entitled,— 'In the matter of the petition of of ' Every affidavit should be divided into paragraphs and every para—should be numbered. The person making the affidavit has to be fully described by giving his name, father's name, residence, profession, age The affidavit must be confined to such facts as the deponent is able of his own knowledge to prove except on interlocutory application, on which statements of his belief may be admitted—provided that the grounds thereof are stated Upon any application evidence may be given by affidavit at the instance of either party but the Court may order the attendance of the deponent for cross-examination If the deponent making the affidavit is not personally known to the commissioner of affidavits, the deponent shall be identified by any person known to the officer of the Court. A literate man must read and sign the affidavit. To an illiterate man the commissioner of affidavits explains the contents of the affidavit.

Different High Courts have framed rules regarding swearing of affidavits The rules are practically the same in substance The rules framed by the High Courts at Allahabad and Rangoon are reproduced below.

Rangoon Rules.

The officer administering the oath to the declar

In administering oaths and affirmations to declarants the Commissioner shall be guided by the provisions of the Indian Oaths Act, 1873

Allahabad Rules

"Affidavits shall be entitled 'In the Court of at—' (naming such Court) If the affidavit be in support of or in opposition to, an application respecting any case in the Court it shall also be entitled in such a case If there be no such case it shall be entitled—"In the matter of the petition of"

Affidavits shall be divided into paragraphs and every paragraph shall be numbered consecutively and as nearly as may be, shall be confined to a distinct portion of the subject

Every person making an affidavit shall be described therein in such manner as shall serve to identify him clearly, and where necessary for this purpose, it shall contain the full name, the name of his father, his caste or religious persuasion, his rank or degree in life, his profession, calling, occupation or trade and the true place of his residence Unless it be otherwise provided, an affidavit may be made by any person in cognizance of the facts deposed to Two or more persons may join in an affidavit, each shall depose separately to those facts which are within his own knowledge, and such facts shall be stated in separate paragraphs

When the declarant in any affidavit speaks to any fact within his own knowledge he must do so directly and positively, using the words "I affirm" or "I make oath and say"

Except in interlocutory proceedings affidavits shall strictly be confined to such facts as the declarant

is able of his own knowledge to prove In interlocutory proceedings, when the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant shall use the expression "I am informed" and if such be the case and verily believe it to be true," and shall state the name and address of and sufficiently describe for the purposes of identification, the person or persons from whom he received such information

When the application or the opposition thereto rests on facts disclosed in documents or copies of documents produced from any Court of justice or source the declarant shall state what is the source from which they were produced and his information and belief as to the truth of the facts disclosed in such documents

When any place is referred to in an affidavit it shall be correctly described When in an affidavit any person is referred to, such person, the correct name and address of such person, and such further description as may be sufficient for the purpose of the identification of such person, shall be given in the affidavit

Every person making an affidavit for use in a Civil Court shall, if not personally known to the person before whom the affidavit is made be identified to that person by some one known to him, and the person before whom the affidavit is made shall state at the foot of the affidavit the name, address and description of him by whom the identification was made as well as the time and place of such identification

No verification of a petition and no affidavit purporting to have been made by a *pardanashin* woman

who has not appeared unveiled before the person before whom the verification or affidavit was made, shall be used unless she has been identified in manner already specified and unless such petition or affidavit be accompanied by an affidavit of identification of such woman made at the time by the person who identified her. The person before whom any affidavit is about to be made shall before the same is made ask the person proposing to make such affidavit if he has read the affidavit and understands the contents thereof, and if the person proposing to make such affidavit state that he has not read the affidavit or appears to be illiterate the person before whom the affidavit is about to be made shall read and explain, or cause some other competent person to read and explain in his presence the affidavit to the person proposing to make the same and when the person before whom the affidavit is about to be made is thus satisfied that the person proposing to make such affidavit understands the contents thereof, the affidavit may be made. The person before whom an affidavit is made shall certify at the foot of the affidavit the fact of the making of the affidavit before him and the time and place when and where it was made and shall for the purpose of identification mark and initial any exhibits referred to in the affidavit.

¹ If it be found necessary to correct any clerical error in any affidavit such correction may be made in the presence of the person before whom the affidavit is about to be made and before, but not after, the affidavit is made. Every correction so made shall be initialled by the person before whom the affidavit is made, and shall be made in such manner

as not to render it impossible or difficult to read the original word or words, figure or figures in respect of which the correction may have been made

The rules made by the other High Courts are not reproduced as the above rules will be sufficient to show the particulars necessary for drawing up and swearing affidavits. As stated above the rules in principle are same and aim at proper identification and insist on stating how the matter referred to an affidavit is known to the declarant

Affidavits at private residence

Affidavits may be sworn at the private residence of any man and a fee is levied for a special commissioner deputed for the purpose by all District Courts *

Form of affidavit (English form)

In the Court of

Suit no of 19

Plaintiff v Defendant

I, Ram Chandra Ghose, plaintiff, son of Hara Chandra Ghose of village Thana Baranagore, Pargana Kassipur, Zilla 24 Parganas aged 32 by profession a trader, do hereby solemnly declare —

(1) That I am plaintiff in the suit referred to above

(2) That defendant in a solenamah filed in previous suit no of 19 of this Court admitted my title to the land in dispute, and that the said suit was disposed of on .

(3) That I have filed a certified copy of the said solenamah but the record of the original case referred

* In Bengal the fee is Rs 5

to in para 2 is necessary for proving the original solenamah

I hereby affirm and declare that the particulars set forth above are true to my knowledge

[Signature of plaintiff]

Identified by

[Signature of the person identifying the deponent]

Affidavits in the Courts of the Subordinate Judges and Munsifs are ordinarily made in the Court language In the Courts of District Judges and Subordinate Judges affidavits may also be made in English

Model forms of affidavits ordinarily filed in Civil Courts have been given in pages 297 307

Costs of affidavits

Affidavits required to be filed in Courts is exempt from stamp duty but other affidavits should be written on requisite stamp In Assam Bengal Bombay Central Province Madras Punjab and in the United Provinces a stamp duty of Rs 2 is levied for affidavits

The following affidavits are exempt from stamp duty

(1) Affidavit or declaration in writing when made as a condition of enlistment under the Indian Articles of war

(2) For the immediate purpose of being filed or used in any Court or before the officer of any Court or

(3) for the sole purpose of enabling any person to receive any pension or charitable allowance

Even though the affidavits meant for filing in pending cases are exempt from stamp duty they require

a Court fee stamp of Re 1 under the rule framed by the Calcutta High Court. An extract from the rule framed by the Calcutta High Court is reproduced below.

the charge for administering the Oath to the deponent in the case of any affidavit under the Civil Procedure Code shall be one rupee in all Civil Courts in the Bengal Presidency and Assam. The charge shall be paid by means of Court fee stamp. But no charge should be made in respect of the following affidavits:

(i) Affidavits made by process server deposing as to the manner of service of a Process

(ii) Affidavits in proof of service or as to avoidance of service made by persons who accompany such process server

(iii) Affidavits made by Public Officers in virtue of their office

CHAPTER II

Models of affidavits

No 1 Affidavit to be filed with an application for appointment of a guardian of a minor party

In the Court of the 2nd Subordinate Judge

Arrah

T S No 312 of 1927

Plaintiff

Defendant

I son of aged years of village Police Station of District mak oath and say —

1 That I am an employee of the above named Plaintiff for years and I know the defendant No 2 who is a minor and his mother Sreemoti This is true to my knowledge

2 That the defendant No 2 is a minor aged years and that he is in the custody of his mother Sreemoti This is true to my knowledge

3 That the said Sreemati has been looking after the properties of the minor defendant No 2 and that she has no interest adverse to that of the minors and the said Sreemati is quite fit to be appointed guardian of the minor This is true to my knowledge and belief as I am in service of the plaintiff who is a near relation of the defendant

4 That the above named minor defendant has no other nearer relation besides the mother This is true to my knowledge and belief as I am seeing the minor and his relations for a long time

Signed

Arrah }
7 6 27 }

Known to me
Signature of the Identifier

No 2 Affidavit for proving service of summons on a party

[Heading as in No 1]

1 That I accompanied a peon of the Court on day of of the year at about P M to the dwelling houses of the defendant Nos 1, 2 and 3 in village where they usually reside and that the said peon served the summons on those defendants in the manner hereinafter stated according to my identification This is true to my knowledge

2 That defendant No 1 accepted the summons together with a copy of the plaint and put his signature on the reverse of the original summons and that the defendant No 2 having refused to accept the summons and the copy of the plaint they had to be posted at his house door, and that the defendant No 3

accepted both the summons and the copy of the plaint but did not sign an acknowledgment stating that he was illiterate This is true to my knowledge

[As in No 1]

No 3 Affidavit for calling a record

[Heading as in No 1]

1 That in Title Suit No of the year of this Court between the plaintiff and the defendant the defendant admitted in his written statement a six annas share of the plaintiff in the disputed property and that the plaintiff has filed in this court a certified copy of the said written statement This is true to my knowledge as I saw the said written statement

2 That it will materially help the plaintiff to prove case if the aforesaid written statement be admitted in evidence and that the plaintiff will sustain material injury if the record be not called for This is true to my belief

3 That the Title Suit no mentioned in para 1 was disposed of on and that the record has been sent to District Judge's Record room This is true to my belief as I saw a copy of the decree of the rent suit

4 That I am a *Gomastha* of the plaintiff and I am thoroughly acquainted with the facts of the case

5 That I am looking after plaintiff's case and I consider it very necessary that the record of the Title Suit No of the year should be called for to prove the plaintiff's title which has been denied by the defendant in this suit This I verily believe to be true

[As in No. 1]

No 4 Affidavit for examination of a Pardanashin Lady on Commission

[Heading as in No 1]

(I aged etc as in No 1)

(1) That I am an employee of the Plaintiff and am looking after the suit on her behalf This is true to my knowledge

(2) That it is indispensibly necessary for the plaintiff that she be examined in this suit to prove the history of her title to the property in suit This is true to my knowledge

3 That I know that the plaintiff is a *pardahnashin* lady who does not appear before the public and that it is essential that she should be examined on commission This is true to my and belief

[As in No 1]

No 5 Affidavit for taking time on the ground of illness of a witness

[Heading etc as in No 1]

1 That I am the defendant of the above mentioned case This is true to my knowledge

2 That my witness Mr who was present at the Court on the last occasion was taken ill suddenly on Sunday last and has been suffering since that time and that I saw him 2 days before and so this is true to my knowledge

3 That the aforesaid witness is not likely to recover before a fortnight This is true to my information from Dr of who is attending the

said witness and with whom I had a talk about the recovery of the said witness

[As in No 1]

**No 6 Affidavit for taking a warrant of arrest
against a witness**

[Heading as in No 1]

1 That I am the plaintiff's *Gonastla* (officer) and am acquainted with the facts of the case This is true to my knowledge

2 That on my identification peon served summons on Mr of on to appear and depose in the suit on and that the said witness accepted the summons and diet money This is true to my knowledge

3 That the said witness is an attesting witness to the mortgage bond in suit and that he attested the bond in my presence and that unless the said witness be examined in the case it will be difficult for the plaintiff to prove the bond in suit as the other witnesses to the bond are dead to my knowledge That in the aforesaid circumstances the witness named above is a material witness in the case This is true to my knowledge and belief

4 That the said witness will not appear in Court unless brought under arrest This I believe to be true from the conduct of the witness

[As in No 1]

No 7 Affidavit of documents

[Heading as in No 1]

1 That the title deeds in respect of the suit land and which are in my (Defendant's) possession are correctly described in the *Schedule (A)* annexed to this affidavit

subject matter of this litigation This is true to my knowledge

2 That the property in suit is in the defendant's possession and that he is realising rent from the tenants of the property This is true to my knowledge and belief as I saw the defendant's men collecting rent in the *mahal* and also heard about it from of

3 That it will take long time before this suit can be finally disposed of The defendant has realised a considerable sum from the property in dispute and is still realising rent from the tenants and enjoying usufruct of the property The defendant has no interest whatsoever in the property That there is a fair chance of this suit being decreed Defendant is a man of not much means and that very little will be realised from him after I get a decree for *mesne profits* in respect of the property in suit against the defendant This is true to my knowledge and belief I heard about the defendant's circumstances from of an *ammuktear* of the defendant

4 That under the circumstances disclosed above it has become necessary that a Receiver be appointed by the court for management of the property and for collection of rent This is true to my belief

[As in No 1]

No 10 Affidavit for attachment of the defendant's property before judgment

[Heading as before]

(1) That I have filed a suit no of against the defendant based on a registered hand note and there is every possibility of the suit being decreed against the defendant This is true to my knowledge and belief

(2) That defendant has no other property besides his homestead described in the Schedule and this is true to my information received from the defendant's neighbour Mr of and I verily believe this to be true

(3) That the defendant having come to know about the aforesaid suit is trying to dispose of his house to one of with a view to defeat my claim under the decree which is about to be passed against him in the said suit That this is true to my information received from Mr of and I believe that to be true

(4) That if the defendant would sell off his house at there will be no possibility of realising my dues under the decree This is true to my knowledge as I know the defendant and his properties for sometime last

(5) That under the aforesaid circumstances it is absolutely necessary that the defendant's house be attached before judgment or security be taken from the defendant for the sum that is about to be decreed against him with costs This is true to my belief

Schedule

[As in No 1)

No 11. Affidavit for arrest of defendant before Judgment

[As before]

1 As para 1 of No 10

2 That the defendant has no property within the jurisdiction of Your Honour's Court This is true to my knowledge as I know the defendant and his means for a long time

3 That the defendant after service of summons in the above suit is trying to leave the jurisdiction of this

Court with a view to defeat or delay the execution of the decree that may be passed against him in the suit This is true to my information received from of and I verily believe it to be true

4 That after the defendant absconds beyond the jurisdiction of this Court it will be difficult for me to realise any sum in execution of the decree that may be passed against him This is true to my belief

5 In the circumstances mentioned in paras 1, 2, 3 4, it is absolutely necessary that a warrant be issued for arrest of the defendant before judgment or in the alternative security be taken from the defendant for the sum that may be decreed against him This is true to my belief

[As in No 1]

No 12. Affidavit for taking an order of temporary injunction

[As in No 1.]

1 That I am the plaintiff in the above suit and that I have sued the defendant for permanent injunction restraining him from excavating a tank in the land in suit This is true to my knowledge

2 That the defendant has no title whatsoever to the land in suit and that the defendant did not possess the land for 12 years or at any time before on which date the defendant forcibly entered on the land in suit with 20 or 25 men and began to excavate a tank on the land inspite of my repeated protest This is true to my knowledge

3 That the suit land belongs to me and that I have a big 2 storied house just on the eastern side of the disputed land and that if the defendant excavates a deep tank on the land the foundation of my house

will be weakened and there is possibility of my house tumbling down and thereby causing heavy loss to me
This is true to my belief

4 That in the circumstances noted above it is necessary that a temporary injunction be issued on the defendant restraining him from proceeding with further excavation of the tank as otherwise there is risk of heavy loss and considerable inconvenience to me

This is true to my knowledge and belief

[As in No 1]

No 13 Affidavit for making preliminary mortgage decree absolute

[As in No 1]

1 That I am the plaintiff No 1 in the above suit and am acquainted with the fact of the case This is true to my knowledge

2 That the defendant did not pay any money either in Court or to the plaintiffs after preliminary decree was passed against him on and that a sum of Rs is due to the plaintiffs from the defendant under the said decree This is true to my knowledge

3 That the period of grace allowed to the defendant has expired This is true to my knowledge as I saw a copy of the decree passed in the case

4 That unless the said Preliminary Mortgage decree be made absolute and the property under mortgage be put up to sale the Plaintiffs dues under the decree will not be satisfied This is true to my knowledge and belief

[As in No 1]

No 14 Affidavit for staying execution of a decree

[As in No 1]

1 That the Plaintiff of Suit no of of this Court has obtained a decree for Rs against me in the

above suit on and that the time for preferring an appeal from the said judgment and decree have not yet expired This is true to my knowledge

2 That I intend to prefer an appeal against the said judgment and decree and have already applied for necessary copies This is true to my knowledge

3 That the plaintiff decree holder has put the aforesaid decree under execution and has attached my dwelling house This is true to my knowledge

4 That I should be put to irreparable loss if my homestead be sold in execution of the aforesaid decree and before disposal of the appeal which I am going to prefer and in which, I am informed I have fair chance of success This is true to my belief

5 That under the circumstances stated above it has become necessary that execution of the decree referred to in para 3 be stayed till the disposal of the appeal on taking proper security from me

[As in No 1]

No 15 Affidavit of property for Letters of Administration or Probate

Schedule III—of the Court fees Act

(ADDED BY S 3 ACT XI—99)

Form of valuation (to be used with modifications if any, as may be necessary).

In the Court of

Re Probate of the will (or Administra-
tion of the property and credits of deceased)

I { Solemnly affirm
...
make oath } and say that I am

the Executor (or one of the Executors or one of the

next of kin) of deceased and that I have truly set forth in annexure A to this affidavit all the property and credits of which the above-named deceased died possessed or was entitled to at the time of the death, and which have come or are likely to come to my hands 2 I further say that I have absolutely set forth in annexure B, all the items I am by law allowed to deduct 3 I further say that the said assets, exclusive only of such last mentioned items, but inclusive of all rents, interest, dividends and and increased values since the date of the death of the said deceased are under the value of

ANNEXURE A.

Valuation of the Moveable and Immoveable property of deceased

Cash in the house, at the banks, household goods, wearing apparel, books, plate, jewels, &c	Rs	a	p
	0	0	0

(State estimated value according to the best of Executors or Administrators belief)

Property in Government securities transferable at the Public Office (state description and value at the price of the day , also the interest separately, calculating to the time of making the application)	0	0	0
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Immoveable property, consisting of (state description giving in the case of house the assessed value, if any, and the number of years' assessment, the market-value is estimated at, and in the case of land the area and all rents that have accrued)	0	0
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Rs a p

Leasehold property (if the deceased held any lease for years determinable state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application)	0	0	0
Property in the public companies (state the particulars and the value calculated at the price of the day also the interest separately calculating it to the time of making the application)	0	0	0
Policy of insurance upon life money out on mortgage and other securities such as bonds mortgage bills notes and other securities for money (State the amount of the whole also the interest separately, calculating it to the time of making the application)	0	0	0
Book debts (other than bad)	0	0	0
Stock in trade (state the estimated value if any)	0	0	0
Other property not comprised under the foregoing heads (state the estimated value if any)			
Total	0	0	0
Deduct amount shewn in Annexure B not subject to duty			
NET TOTAL	0	0	0
[As is No 1]			

PART III.

DISTRICT COURT LAWS ETC Law and Procedure Prescribed by the following Acts.

e g

- 1 The Indian Succession Act (Act XXXIX of 1925)
- 2 The Guardians and Wards Act (Act VIII of 1889)
- 3 The Lunacy Act (Act V of 1912)
- 4 The Insolvency Act (Act V of 1920)
- 5 The Land Acquisition Act (Act I of 1894)

— WITH —

Copious Notes and Rulings

Models of petitions under the above Acts filed before
District Judges and District Delegates have also
been given as per list given below —

- 1 Petition for Probate
- 2 Petition for Letters of Administration
- 3 Petition of caveat
- 4 Petition for Succession Certificate for, collection of debts
5. Petition for appointment of a guardian of a minor
- 6 Petition „ „ „ a committee for a lunatic
- 7 Petition for Insolvency
- 8 Petition of claim filed in Land Acquisition Case
- 9 Petition of reference in Land Acquisition Case against
the award of the Collector



CHAPTER I.

Probate and Letters of Administration under Act XXXIX of 1925

Application for Probate or Letters of Administration with the will annexed has to be made by a petition distinctly written in English or in the language in ordinary use in Proceedings before the Court in which the application is made with the will or without any will as the case may be

The application may be made either before the District Judge or District Delegate who may be a Munsif or a Subordinate Judge specially empowered in this behalf. The District Delegate can dispose of uncontested cases and grant Probate or Letters of Administration. If a case before a District Delegate becomes contested he returns the papers to the applicant for presentation before the District Judge.

A District Judge after framing issues in a contested case may transfer it to a Sub Judge or Munsif for disposal according to the valuation of the property in respect of which the application is made.

Contents of the application

An application for Probate should contain the particulars given below —

- (1) the time of testator's death ,
- (2) that the writing annexed is his last will and testament or as the case may be ,
- (3) that it was duly executed
- (4) the amount of assets which are likely to go to the petitioner's hand , and

(5) where the application is for Probate—that the petitioner is the Executor named in the will

In addition to the above particulars the petitioner shall state the following —

(6) (a) When the application is to the District Judge that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of such District Judge and

(b) When the application is to a District Delegate that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate

(c) When the application is to the District Judge and any portion of the assets likely to come to the petitioners hands is also situate in another province, the petitioner shall state the amount of such assets in each province [For further particulars as to limited jurisdiction of any District Judge to grant Probate or L A in such a case,—Read Act XXXIX of 1925, Part IX]

(d) That no application has been made to any other Court for a Probate of the will or for Letters of Administration of the same estate

Application for Letters of Administration shall be made by petition distinctly written as aforesaid and stating —

(1) The time and place of death of the owner,

(2) The family or other relatives of the deceased and their respective residences,

(3) The right in which the petitioner claims,

(4) The amount of assets which are likely to come to the petitioner's hand, and also the particulars as in para 6, clauses (a), (b), (c), (d).

V B—An affidavit in the prescribed form stating the particulars of the properties should be filed with the application for Probate or Letters of Administration. For form of affidavit see Part II (B) Chapter on Affidavits page 308

Verification

Verification of application for Probate or Letters of Administration —

I the petitioner in the above petition declare that what is stated therein is true to the best of my information and belief

Verification of one of the witnesses to the will in the application for Probate as required under the law is given below —

I (C D) one of the witnesses to the last will and testament of the testator mentioned in the above petition declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)

For procedure and notices to be served—See section 288 of the Act 39 of 1925

Caveat

Any person may file a caveat in a District Court objecting to the grant of Probate or Letters of Administration in respect of an estate and no proceedings will be taken after the filing of petition for Probate or Letters of Administration without giving a notice to the caveator

If objections are filed in a Probate or Letters of Administration case the Court proceeds to frame issues for determination of the points at issue and

the case is tried as a regular suit. A District Judge may transfer such a suit to the file of a Subordinate Judges or Munsiff for trial.

Note—For forms of objections see C P Code Schedule I. Appendix A Form No 15

For forms of petitions for Probate and Letters of Administration and caveat see Appendix to this part

N B—Affidavit of property should be made and duty for grant of Probate or Letters of Administration has to be paid. For duty see Chapter on Court Fees in Part X. Besides general citations as in Probate cases special notices of the application have to be served on other relatives of the deceased. For notice fees—see Chapter on Process fees in Part X. The applicant may be called upon by Court to execute a security bond for a certain sum with or without surety. For form of such a bond see Part VII on Conveyancing.

Note—If there is a will of the testator but none is appointed executor thereby the said fact should be mentioned in the petition and Letters of Administration with a copy of the will should be asked for.

Rulings.

Letters of Administration when granted

See Part IX of Act 39 of 1925. Letters of Administration are granted only in case of intestacy. 9 C L J 576. For right of Executor or Administrator. Read 17 M L T 61, 21 C W N 1043.

Duty of Probate Court

Court is to see whether the will was executed as required by law. 23 C L J 631 P C. The effect of the will has to be decided, if necessary in a regular suit. See note before plaint in Administration suit in Appendix to part I.

Probate of a portion of will.

Probate may be granted of a portion of a will. 1 C L J 109 at page 113 (*Vide* section 237 of I S Act.)

f executor is a minor.

Probate can be taken by his guardian Nominee of a Court of Ward can take Probate See sections 244, 245 of Act 39 of 1925, and 10 C W N. 241

Administration by a party who is not ordinarily entitled to get Letters of Administration.

Such an appointment is discretionary with Court—See sections 231 to 234 I S. Act, and 12. C W N. 747.

Grants of effects unadministered.

If one executor after taking out Probate dies leaving the estate unadministered a new representative may be appointed to administer the estate but if the application is made long after the death of the previous executor, application may not be granted. 10 C W. N 432

Revocation of Probate.

(1) If a will has not been proved in solemn form the probate may be revoked 5 C L J. 560

(2) A Probate cannot be revoked at the instance of the party who had knowledge of the Probate proceedings I L. R 27 Cal 927.

(3) *Circumstances rebutting presumption of intention to revoke* is admissible. 8 C. W N. 822.

(4) Probate is revoked if the grant was obtained by fraud I. L. R. 33 Cal. 13, or by false inventory. 34 I C. 435

4 (a) For grounds of revocation—See 13 Bom. L R 38, 23 C. L J 82 31 I C. 593.

(5) Probate is revoked if the will is proved to be a forged one—5 C. W. N. 377. Such a grant is void.

Compromise of Probate case.

Probate can be granted only when the will is proved in solemn form For effects of compromise of a Probate case without proving the will—see I L R. 31 Cal. 357=14 C W. N. 967 An application for Probate can not be converted into one for Letters of Administration 1 P. L. W. 744.

Effect of Probate.

(1) Probate is conclusive as regards representative title I L R. 25 Cal 354

(2) For effect of Probate of a will of a Mahomedan *vide* I L R. 33 Cal 116 P C

(3) Payment to executor affords full indemnity against any other party's claim—10 C W N. 422

When can the application for Letters of Administration be made.

Application can be made only where there is estate to be administered. 14 C. W. N 463

Burden of proof in Probate case.

The burden of proof lies on the person propounding the will. I L R. 25 Cal 824 P C

Citations.

(1) Only persons interested in the property left by the deceased should get notices of the Probate proceedings I L R. 28 Cal 441

(2) For nature and extent of interest in property entitling a party to notice—see 10 C. L. J. 263

Security.

(1) Security is not required from executor after grant I. L. R. 31 Cal. 688

(2) In case of Letters of Administration security bond for the amount ordered should be executed in favour of the District Judge—I L R 33 Cal 713

Discharge of surety.

A surety may be discharged on his application after giving notice but he will be held liable for past mal administration I L R 29 Cal 68

Suit by Executor.

Executor bringing suit as an executor must produce the entire Probate in Court—I L R. 32 Cal 710

Power of Executor or Administrator to dispose of property (See sec 307 I. S Act)

As to who can bring an Administration suit against Executor or Administrator see notes to such a suit in Appendix to part I Read 45 Bom 75.

(1) An Executor cannot dispose of property when the estate has been fully administered—3 C W. N 635—9 C L J 116

(2) An Executor can sell or mortgage property if there is no restriction in the will 8 C W N 362 36 Mad. 575, 24 Bom L R 753.

(3) An Executor need not take permission of the Judge to dispose of property unless his power be limited in the will—I L R, 23 Cal 908

(4) Compromise of suit by Executor in excess of his power is invalid—14 C W. N. 451.

(5) Lease by Administrator for more than 5 years is voidable—8 C. W. N 54

(6) Mortgage by Administrator without Judge's permission is voidable—8 C. W N. 54.

(7) Alienation by Hindu widow administratrix with Court's permission is valid—I. L R. 26 Cal 607

(8) When the estate is fully administered the Administrator if he is an heir can sell his interest without Court's permission—4 C W N 635

Can application for Probate be subsequently converted into one for Letters of Administration—No 41 Ind Cas 279 1 P L W 744

Liability of Executors for accounts—Even if the Executor submitted accounts to the Court he is still liable to render an account to the heirs of the deceased 41 Cal 278. [Executor is liable to pay interest at 6 p c p a on money not invested by him 6 L W 85

Object of Probate proceedings —The object is to find out the person who would administer the estate of the deceased No question of inheritance should be gone into in such a proceeding The Court should only see whether the will was duly executed 17 C W N 445

Which Court can revoke Probate or Letters of Administration —The Court which granted the Probate or Letters of Administration 23 C W N 1045

Can Probate be granted to a Corporate body —Yes it was granted to the Calcutta University 22 C L J 583

Can there be substitution in a Probate proceeding —No 51 Ind Cas 76

Can Probate be revoked on the ground that the provisions of the will are illegal —No 23 C W N 658 See page 316

Effect of transfer by executor —Where the Probate is revoked subsequently—the transfer by executor if made in good faith, will not be void 7 Ind Cas 9

Standard of evidence for proving a will—The standard of proof is that amount of proof on which a prudent man would believe that the will was executed 25 C W N 779

Is an heir of Executor liable ?

Heir of executor is not liable for executor's acts but is liable for sum due from executor to the estate—to the extent of executor's assets in heir's hands—41 Cal 271 See 17 M L T 61

Revocation

(1) No revocation is ordered if the terms in the will are illegal—23 C W N 658 But revocation may be asked for on the ground of false inventory 34 I C 435

(2) If revocation is asked for after long time,—*delay must be explained*—19 C W N 366

(3) If certificate was obtained by concealment of true facts and making untrue allegations the certificate granted can be revoked I L R 19 Bom 821

Can Surviving Executors sue the heirs of deceased executor for sum due to the estate—
Yes 41 I C 605

Note—Administration suit can be brought by any interested person—59 I C 396 Costs of such suits are borne ordinarily by the estate—21 C W N 280 (See 45 Bom 75)

Refund of money deposited for purchase of stamp.

If certificate is not granted, the money deposited should be refunded I L R 11 Mad 241

Effect of finding.

Any decision of title in a proceeding under this Act does not bar a suit for determining the same question See section 25

Mahomedan will —

A Mahomedan will though unprobated can be used as evidence to prove title 15 C W N 185

Appeal

Under the Act some orders passed by the District Judge are appealable

The following orders are appealable —

(1) Allowing a caveat—I L R 17 Cal 48

(2) Granting or disallowing Probate—I L R 17 All 475 19 Bom 821, 26 All 173

(3) Refusing to stay issue of Probate—I L R 24 All 13 P C

(4) Giving permission to sell property I L R 28 Cal 149

Succession Certificate

Certificates for collection of debts due to the estates of the deceased persons were formerly issued under Act VII of 1889 but the said Act was repealed by Act XXXIX of 1925 and the provisions for granting certificates have been incorporated in sections 370 390 of the Act of 1925 These certificates are issued to facilitate the collection of debts and the procedure is less costly as the party applying for it is not required to pay duties on the value of the entire estate of the deceased as in a case of Probate or Letters of Administration but on the amount for which the certificate is asked for

The applicant is to make an application bearing a Court fee stamp of Rs 12 and he is required to deposit with the application the sum necessary for purchasing Court fees required for the certificate In case the original certificate did not contain

authority to collect all the debts—a fresh application may be made for extension of the certificate under Sec 376 and the original certificate may be extended authorising the applicant to collect the new debts. But in this case the applicant has to pay 50 p c in addition by way of penalty over the amount ordinarily chargeable as duty. The Court will call upon the applicant to furnish security when an order for granting an original or extended certificate is made and on furnishing security called for, the Court will issue a certificate as prayed for.

Courts which can issue Certificates.

An application for a Succession Certificate can be made either to the District Judge or to any Sub-Judge or Munsif specially authorised to grant certificates under Sec 388 of the Act. It may be convenient in Sub-Divisions to apply for certificates before a Munsif or a Sub-Judge and these officers when authorised have concurrent powers with the District Judge to grant certificates for unlimited amounts. When security is ordered a duly stamped security bond executed by the applicant and one or more sureties as may be directed, for the required amount, has to be filed in Court and the sureties have to bind themselves to indemnify the persons legally entitled to any amount covered by the certificate should the occasion so demand.

The security bond furnished is tested by a responsible officer of the Court before it is approved by the Court and the certificate is issued.

Contents of Application

Application for certificate has to be signed and verified and should contain the following particulars namely —

(a) The time of the death of the deceased,

(b) the ordinary residence of the deceased at the time of his death, and if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made then the property of the deceased within those limits,

(c) the family or other near relatives of the deceased and their respective residences,

(d) the right in which the petitioner claims,

(e) the absence of any impediment under Sec 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted, and

(f) the debts and securities in respect of which the certificate is applied for (Sec 372 of the Act)

Where to apply

Certificate under this Act may be granted by a District Judge or a Sub Judge or a Munsiff specially authorised (under Sec 381) within whose jurisdiction the deceased ordinarily resided at the time of his death or if at that time the deceased had no fixed place of residence, the Court within whose jurisdiction any portion of the property of the deceased may be found (Vide Sec 371 and 20 W. R 286)

Citations

Besides general notice to be affixed in some conspicuous part of the Court House, special citations are to be issued on persons who, in the opinion of the Court, may be entitled to get notices of the application.

Procedure

On the date fixed for the case the Court may take evidence either orally or by an affidavit and if it is satisfied that there is ground for granting the certificate it shall pass orders granting the certificate on such terms as to security as it thinks fit. If any party appears and files an objection the Court will take evidence adduced by the applicant or the objector and decide in a summary manner whether the applicant is entitled to get the certificate applied for. When an order is made granting or refusing or revoking a certificate at the instance of a party the order is appealable under sec 384. Such an order passed by the District Judge is appealable to the High Court and if the order be passed by a Sub Judge or a Munsiff, an appeal will lie to the District Judge. It may be mentioned here that if an *Ex parte* certificate is issued any person interested may come in subsequently and apply for revocation of the certificate under Sec 383. *The Court may revoke the certificate —*

(1) where the proceedings were defective or

(2) where the applicant got an order for the certificate by a fraudulent misrepresentation of facts, or

(3) the applications for the certificate contained untrue allegations

An order for security is not appealable according to some of the High Courts—Vide 63 I C 846, 26 All 173, but in a recent case the Calcutta High Court has held that such an order is appealable—Vide 25 Cal 320—1 C W. N. 59

Effect of Certificate.

It does not entitle the holder to administer the estate of the deceased generally, (Vide 33 I C 157) but it simply authorises him to collect the debts mentioned in the certificate and affords protection to the debtors making payments to him Vide 57 I. C 641 Even when the certificate is subsequently revoked payments made before revocation to the holder of the certificate gives valid discharge to the payer, Vide Sec. 386

What is decided in a proceeding for Succession Certificate.

In the proceeding intricate questions of law or fact as to the rights of the contending parties to get the estates of the deceased are not decided The Court simply sees in a summary way who is the best man to collect the debts due to the estate of the deceased 30 Cal. 581. The Court is not to consider whether the debt is recoverable or not. 15 C. L. J. 384

Meaning of the word 'Security' for which Succession Certificate may be granted.

It has been defined in Sec 370 (Please read the Sec.) The word "debt" does not include rent, revenue or profits payable in respect of land for agricultural purposes.* 26 Cal 536=3 C. W N. 294. Dower debt is a debt for which Succession Certificate will be necessary. 30 All. 315 For money in deposit in Saving's Bank in a Post office read sec. 4 of the

* Note :—A certificate is not necessary for collection of rent of agricultural land but it is necessary for collection of rent of homestead land due to the estate of a deceased—41 I C 84 See sec 214 of Act 39 of 1925 for definition of "debt"

Government Savings Bank Act XVI of 1923 and for Postal Certificates see the Act of 1917

No suit can be decreed for debts due to the estate of the deceased unless Succession Certificate or any other certificate required by law is produced in Court but it is not necessary to file the certificate along with the plaint—(78 I C 387) But the Court will not pass a decree till the certificate is filed 57 I C 650 Certificate will be necessary when the plaintiff dies and his heir is substituted in the course of the suit 16 Bom 519 A certificate is not necessary by getting a pure mortgage decree but if a personal decree is sought for afterwards for any sum due after sale of the mortgaged property production of a certificate is imperative 12 C W N 145 35 Cal 767 If a debt is assigned after the death of the deceased by his heirs the assignee is required to produce a certificate for getting a decree 15 Mad 419

Production of a certificate is necessary for execution of a decree for money due to the estate of a deceased 19 Cal 482 18 All 34 But where the decree holder dies after filing the execution petition and his heirs are substituted in the proceeding no certificate is necessary 26 Cal 838 A certificate filed in a Court cannot be questioned 27 All 87 There is no provision for granting a joint certificate for recovering a debt

Rival claimants and who can get certificate

In considering who is entitled to get the certificate the Court is to see the fitness of the person as well as his propinquity 12 W R 356 A Certificate can be granted to the widow of the deceased (6 C W N 345) and she has right of preference wher

the dispute is with a cousin of the deceased 14 W. R 415 The Court will ordinarily grant certificate to a person who appears to be the natural heir of the deceased, 7 Mad 452

Valuation for purpose of certificate

For Certificate in respect of promissory notes, debentures etc the market value of the property at the time of the application is taken into consideration for calculating the duty payable

Certificate for partial collection of a debt.

Succession certificate may be issued in respect of a portion of a debt in a fit case and it is discretionary with the Court either to grant or refuse such a certificate A W N 1893 page 84

For English forms of application see Appendix to this part For Bengali form see Bengali Appendix

Note—For procedure notices to be issued and how certificate is granted in cases of rival claimants—see section 370 to 390 of Act 39 of 1925

Extension of certificate

Court may extend the certificate under section 376 including any debt or security not originally specified as stated before

Revocation.

For grounds of revocation of certificate—see section 383

Court-fees to be paid for certificate.

For this see the Chapter on Court Fees in Part X

Note—In calculating debts interest has to be calculated and in the case of G P. Notes the market-value of such notes on the date of application has to be taken as stated above The same fees have to be paid whether the certificate is taken for collection of debt or for drawing interest due on such debts

Objection

If objections are filed the Court will frame issues and try the case in a summary way and pass orders according to the decisions of those issues. The Court however will not enter into complicated questions of title but will simply try the question as to who is the fit person to get the Certificate. See I L R 30 Cal 581

SUCCESSION CERTIFICATE ACT

Some other important Rulings

Necessity of certificate

A decree for money payable to^r the estate of a deceased person can only be passed on production of the certificate. I L R 35 Cal 767

Value of certificate

(1) A certificate granted by any Court cannot be questioned by the Court in which it is filed. I L R 27 All 87

(2) The certificate if not filed with the plaint can be produced during trial. I L R 20 Cal 755

(3) A certificate is necessary for the amount which becomes payable after the testator's death. I L R 36 Cal 936

(4) A money decree cannot be executed without a certificate. I L R 20 Cal 755

Who can apply

(1) Any person interested in the money may apply

(2) Guardian of a minor interested in the money may apply. I L R 28 Bom 344

Debts

Existence of the debt for which certificate is applied for should be proved if so required. I L R 25 Cal 320

Note—Certificate can be granted for a part of a debt also—if this Court thinks it fit to do 18 C W N 136 See page 326

Complicated questions of title.

Such questions need not be enquired into by the Court issuing the certificate The certificate should be granted to the person who has *prima facie* the best title I L R 30 Cal 581

Security

(1) Guardian of a minor applying for certificate should furnish security I L R 25 Bom 523.

(2) Hindu widow applying for certificate in respect of sums due to her husband's estate should furnish security 5 M L J 36 For form of security bond see Part IV on Conveyancing

CHAPTER II.

The Guardians and Wards Act VIII of 1890

Which Court can appoint guardian of a minor

A District Court can appoint guardian of person or property of a minor If the application be for guardianship of the person of a minor, it should be made to the District Court having jurisdiction over the place where the minor ordinarily resides but if the application be for guardianship of property of the minor it may be made either to the District Court within whose jurisdiction the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property

After passing of the Act IV of 1926 'The High Court may by general or special order, empower any officer exercising original civil jurisdiction subordinate to a District Court (i.e. any Sub Judge or Munsiff) or authorise the Judge of any District Court to

empower any judicial officer subordinate to him, to dispose of any proceeding under the Guardians and Wards Act transferred to such an officer " (Vide Section 3 of Act IV of 1926) Before the passing of the said Act the District Court was the only Court which could deal with and dispose of any proceedings under the Act

Nature of Proceedings, appointment etc

Proceedings under the Guardians and Wards Act are of a summary nature (1). The Court is simply to see whether the proposed guardian is fit to look after the welfare of the minor (2) If a Mahomedan minor's mother remarries—she is considered unfit to get custody of the minor and so she must not apply (3) When a guardian is appointed by a will no other person can be appointed guardian (4) Where a guardian of person of a minor has been appointed, the Court can appoint a separate guardian of property (5) Unless there is necessity for appointment of a guardian the Court will not appoint a guardian—so the reason for making the application must be clearly set forth in the application (6) If the minor has attained age of discretion the Court will consult the wishes of the minor in making the appointment (7)

A Court has no power to make an order appointing a guardian of a minor except on a substantive petition from a person willing to act as guardian (8) A *Pardanashin* lady may be appointed guardian and

(1) 66 I C 888 (2) 18 C W N 1198 18 C W N 1
34 Bom 121, (3) 11 C L J 632 (4) 16 M L J 357 40
672, 19 C W N, 513, (5) 15 W. R 230 (6) 15 C W
(7) 18 C W N 1198 (8) 38 Cal 783

due administration of minor's property may be safeguarded by taking security (9) If adoptive parents are dead the natural father may be appointed guardian (10) If minor's father by a will has appointed an executor to manage the property—and if Probate is taken of the will—no guardian of property of the minor need be appointed (11) Where the minor is a member of a joint Mitakshara family and has no separate property—no guardian of property can be appointed (12)

Contents of application for appointment of guardian of a minor.

(1) If the application is not made by the Collector it shall be by petition signed and verified in manners prescribed by the Code of Civil Procedure for the signing and verification of a plaint and stating so far as can be ascertained—

(a) The name, sex, religion, date of birth and ordinary residence of the minor ,

(b) Where the minor is a female, whether she is married, and if so, the name and age of her husband

(c) The nature, situation and approximate value of the property, if any, of the minor ,

(d) The name and residence of the person having the custody or possession of the person or property of the minor ,

(e) What near relations the minor has and where they reside ,

(9) 14 C L J 226=15 C W N 676 (10) 15 C W. N 558.
 (11) 15 C W N 558 (12) 9 Cal 301

(f) Whether a guardian of the person or property or both of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment

(g) Whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property or both of the minor and, if so, when, to what Court, and with what result ,

(h) Whether the application is for the appointment or declaration of a guardian of the person of the minor or ,

(i) Where the application is to appoint a guardian, the qualification of the proposed guardian ,

(j) Where the application is to declare a person to be a guardian the grounds on which that person claims ,

(k) The causes which have led to the making of the application , and

(l) Such others particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state

(2) If the application is made by the Collector, it shall be by a letter addressed to the Court and forwarded by post or in such other manner as may be found convenient and shall state as far as possible the particulars mentioned above

(3) The application must be accompanied by declaration of the willingness of the proposed guardian to act and the declaration must be signed by him and attested by at least two witnesses
[See section 10]

N B—For procedure after the filing of the application—see sections 11 to 19

N B—No duty is required for this application but the guardian may be called upon by the Court to execute a bond with or without sureties for a certain sum. No affidavit of property is required for filing with this petition. Besides general citations notices of the application are given to the near relatives of the minor.

For fees for such notices—see the Chapter on Process Fees in part X

Procedure if objection be filed.

The Court will then frame issues and decide the case like a regular suit and pass necessary orders on determining the issues. The District Court may transfer the case to a Sub-Judge or a Munsiff under the new law for disposal.

Fresh application.

If an application be dismissed for default—a fresh application can be filed for appointment of a guardian of a minor (1)

Power of a guardian in dealing with minors's properties.

Guardian cannot mortgage minor's property without Court's permission. Such a mortgage is not binding on the minor (2). A guardian cannot transfer minor's property without Court's permission. Court's permission should be obtained by *bona-fide* placing all material facts before the Court and not by fraudulent misrepresentation or concealment of facts (3). A guardian cannot acknowledge debt of a minor.

(1) 17 C W N 429, 68 I C 291. (2) 25 Cal 909. (3) Read 22 C W N 477 and 21 C W N 864; Read section 21 of the

unless it be for his benefit (4) A lease by a guardian for over 5 years without Court's permission is invalid (5) [For effect of contract made by a guardian Read 34 Cal 163 F B and for liability of a minor for such contract Read 39 Bom 915]

It must be remembered in the above connection that a natural guardian does not cease to be a natural guardian simply because he is also appointed guardian by the Court (6) It has been held by their Lordships of the Privy Council that the acts of a natural guardian are binding on a minor unless set aside by a Court (7)

Notice

Notice is not absolutely necessary where all persons who should get notices are before the Court (8)

Review

An order of a District Court appointing a guardian is final and such an order cannot be reviewed (9).

Refusal by Court to remove a guardian—Appeal

Such an order is final and no appeal lies against the order (10), but the order can be challenged by way of revision

If there be proceedings in more Court than one : Proceedings in one of the Courts may be stayed by High Court (11)

When a guardian of property cannot be appointed : If a minor's property be in the hands of executors (appointed by minor's father in his will)

Limitation Act of 1908 (4) 43 I C 865 (5) 15 Cal 627, 2 A J 507 (6) 3 C L J 12 (7) 7 C W N 578 P. C (8) 18 C W. N 160 (9) 4 Lah L T 274 (10) 46 Mad 873 (11) 26 Cal 133
3 C W N 91

who have taken Probate no guardian of property of the minor can be appointed (12) The guardian of property has to file accounts of income and expenditure of minor's property regularly in Court

CHAPTER III

The Indian Lunacy Act (Act IV of 1912)

Proceeding in Lunacy cases in Presidency towns

The law as to lunacy has been embodied in the Indian Lunacy Act of 1912. If the alleged lunatic resides within the original jurisdiction of a High Court application for judicial inquisition as to the lunacy of the person can be made by any relative of the alleged lunatic or by the Advocate General to the High Court within whose jurisdiction the lunatic ordinarily resides. Notice of the application is served on the lunatic and his near relations. The Court then fixes a day for enquiry into the matter. The lunatic may be called upon to attend the enquiry to be examined by the Court or by a competent medical man for ascertainment of the mental capacity of the alleged lunatic. If the lunatic resides within the jurisdiction of any District Court at the time of the inquisition the High Court may ask the District Court to hold an inquisition and send a report. If the High Court is satisfied either on the evidence before it or on the report of the District Court as to the alleged lunacy then it shall pass an order under Sec 46 for proper custody of the lunatic and for the management of his property

It may also, in a fit case, simply pass an order for the management of the lunatic's property without making any order as to his custody (*Vide* Sec 46) The manager is to administer the property under the direction of the Court, and the Court may, for payments of lunatics's debts, or for discharge of any incumbrance on his property, or for his maintenance of himself or of his family or for maintenance of any dependent member of his family or for meeting the costs of the lunacy proceeding, pass necessary orders (*Vide* Sec 49) In case of sale of the lunatic's properties the Court of Wards, in certain cases, may also assume charge of the lunatic's property under direction from the Court The order appointing a manager of a lunatic's property and person may be set aside under sec 60, if it is proved, to the satisfaction of the Court, that the unsoundness of mind has ceased

Proceedings in Lunacy cases outside the Presidency Towns—where to apply ?

Whenever any person residing within the jurisdiction of any District Court is possessed of property and is alleged to be a lunatic, the District Court, within whose jurisdiction such person resides may, upon an application direct an inquisition under sec 62 for the purpose of ascertaining whether such person is of unsound mind and is incapable of managing himself and his affairs

Who should apply ?—The application may be made by any relation of the alleged lunatic, or by any Government pleader or by the Collector of the District

Notice — Notices of the application are served upon the alleged lunatic and upon his relations. This may be effected in any way the Court directs.

Enquiry.

The District Court may require presence of the lunatic at the enquiry and get him examined by a medical man and take such evidence as may be adduced. The District Court may, if it thinks fit to do so, appoint two or more persons to act as Assessors to help the Court in the inquisition.

Delegation of enquiry to the Sub-court

If the alleged lunatic resides at a distance of more than 50 miles from the place where the District Court is held, the District Court may issue a commission to any sub-court to hold the inquisition and the said sub-court may appoint Assessors to help it. The subordinate Court then holds an enquiry and submits a report with the opinion of the Assessors, if any.

Appointment of a guardian and manager.

If the District Court is satisfied, either on the evidence before it or on the report of the subordinate Court, that the alleged lunatic is really so it appoints a manager of the lunatic's estate and may also appoint a guardian of his person. The Court generally takes security from the manager appointed by it (Vide sec 71). The legal heirs of a lunatic shall not ordinarily be appointed guardian of his person (Vide sec 72).

Powers of the manager of a lunatic's estate.

The manager may exercise the same powers in the management of the estate as might have

been exercised by the proprietor, if not a lunatic and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic

Provided that no manager so appointed shall without the permission of the court

(1) mortgage charge or transfer by sale, gift exchange or otherwise any immoveable property of the lunatic or

(b) lease any such property for a term exceeding five years [but permission may be granted to lease for over five years subject to any condition or restriction which the Court thinks fit to impose]

Before granting any such permission the Court may cause notice of the application for permission to be served on any relative or friend of the lunatic and may make or cause to be made such enquiries as to the court may seem necessary in the interest of the lunatic

The manager appointed by the Court has to furnish an inventory of properties coming to his hands and accounts every year If the inventory or the account be challenged by any person interested the District Court may itself enquire into the matter or may refer it to any subordinate Court

Suit against the manager

Any relative of a lunatic may under sec 79 get leave of the District Court to sue the manager for accounts

Removal of manager and guardian

The District Court for sufficient cause may remove any manager appointed by it and may compel the person so removed to make over the properties in

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Penalty of manager for refusing to give accounts

The District Court may in such a case impose a fine not exceeding Rs 500/- by an order and may realise the amount as if it were due under a decree of a Court (Vide sec 83)

Appeal

An order passed by the District Court in any of the foregoing cases may be appealed against to the High Court

Powers of Manager.

The powers of a manager are almost similar to the powers of a guardian of a minor—so please refer to the rulings in the last chapter for further particulars

CHAPTER IV.

The Provincial Insolvency Act, 1920 (Act V of 1920)

What is an act of insolvency ?—A debtor commits an act of insolvency in each of the following cases :—

(a) if in British India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally ,

(b) if in British India or elsewhere he makes a transfer of his property or part thereof with intent to defeat or delay his creditors ,

(c) if, in British India or elsewhere, he makes any transfer of his property, or any part thereof which would, under this or any other enactment for

the time being in force, be void as a fraudulent preference if he were adjudged an insolvent,

(d) If with intent to defeat or delay his creditors,—

(i) he departs or remains out of British India

(ii) he departs from his dwelling house or usual place of business or otherwise absents himself

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him,

(iv) if any of his property has been sold in execution of a decree of any Court for the payment of money

(v) if he petitions to be adjudged an insolvent under the provisions of this Act,

(vi) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend payment of his debts, or

(vii) if he is imprisoned in execution of a decree of any Court for the payment of money

N B—It should be noted that the act of an agent may be construed as the act of the principal (Sec 6)

Who can apply ? A debtor may apply to a Court of competent jurisdiction for adjudication of himself as an insolvent, and it is equally open to a creditor or creditors to put in an application for adjudication of the debtor as an insolvent. But the circumstances under which a debtor or creditor may apply are different. The circumstances under which a debtor may apply are as follows —

When can a debtor apply ? A debtor can apply when (1) he is unable to pay his debts and

(a) his debts amount to five hundred rupees ;

(b) he is under arrest or imprisonment in execution of the decree of any court for the payment of money , or

(c) an order of attachment in execution of such a decree has been made, and is subsisting against his property (Sec 10)

Thus it will appear that condition (1) coupled with any of the three conditions (a), (b) or (c) will entitle a debtor to put in a petition. But a debtor in respect of whom an order of adjudication under this Act has been annulled, owing to his failure to apply or prosecute an application for his discharge is not entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied that the debtor was prevented by any reasonable cause from preventing or prosecuting his application. But if the subsequent petition is based upon facts substantially different from those contained in the petition on which the order of adjudication was made, then the order of adjudication will be no bar to the presentation of a subsequent petition. (Vide Section 10)

When can a creditor apply? A creditor may present an Insolvency petition against a debtor when (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors amount to five hundred rupees, and (b) the debt is a liquidated sum payable either immediately or at some certain future time, and (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition

If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor (Sec 9)

Where to present the petition? An insolvency petition must be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business, or personally works for gain, or if he has been arrested or imprisoned, where he is in custody, but an appellate Court or a Court exercising revisional jurisdiction cannot entertain any objection as to place of presentment of an application unless such an objection was taken before the Court of the first instance at the earliest possible opportunity and unless there has been a consequent failure of justice.

What shall an insolvency petition contain when it is presented by a debtor? An insolvency petition when presented by a debtor shall contain the following particulars —

- (a) A statement that he is unable to pay his debts,
- (b) the place where he ordinarily resides or carries on business or personally works for gain, or if he has been arrested or imprisoned the place where he is in custody,
- (c) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has

been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made ,

(d) the amount and particulars of all pecuniary claims against him, together with names and residences of his creditor so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him ,

(e) the amount and particulars of all his property, together with —

(i) a specification of the value of all such property not consisting of money ,

(ii) the place or places at which any such property is to be found , and

(iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1908 or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree

(f) a statement whether the debtor has on any previous occasion filed a petition to be adjudged an insolvent and where such a petition has been filed

(i) if such a petition has been dismissed, the reason for such dismissal or

(ii) if the debtor has been adjudged an insolvent, concise particulars of the insolvency, including a statement whether any previous adjudication has been annulled and if so the grounds therefor

What particulars have to be put in a creditor's application ? The particulars are:—

(a) the place where the debtor ordinarily resides or carries on business or personally works for gain, and if he has been arrested or imprisoned, the place where he is in custody ,

(b) the act of insolvency committed by such debtor, together with the date of its commission, and

(c) the amount and particulars of his or their pecuniary claim or claims against such debtor

Signing and verification of the application. (Sec. 12).

An application for insolvency, whether put in by a debtor or creditor, must be signed and verified

Procedure for admission of insolvency petition :—

An insolvency petition has to be filed like a plaint in a civil case. After the petition is filed a date is fixed for hearing of the petition. The creditor or a debtor, as the case may be, has then to be served with notices of the application. In a case where the petitioner is the debtor, it is ordinarily the practice to appoint an *ad interim* receiver of the property of the debtor or any part thereof, the Court may also at its discretion appoint an *ad interim* receiver even in cases where the petitioner is the creditor. The powers of an *interim* receiver are akin to those of a receiver appointed under the Civil Procedure Code. The Court also has powers to appoint a such receiver at any time after the admission of the petition and before the order of adjudication is passed (Vide Sec 19 and 20)

What interim proceedings the Court may take—

While admitting the insolvency petition or at any time subsequent but before adjudication, the Court may make the following orders :—

(a) Call upon the debtor to furnish proper security for appearance until final orders are made upon the petition

(b) Direct the debtor's detention in civil prison should he fail to furnish security

(c) Order the attachment by actual seizure of the whole or part of the property in possession or under control of the debtor excepting the his books of accounts and such other things as cannot be attached under the Civil Procedure Code

(d) Order a warrant to issue with or without bail for the arrest of the debtor and direct that he be detained in prison until the Court orders his release on such terms as it thinks fit (Sec 23)

The procedure at the hearing—The debtor when he has applied for insolvency shall make out the allegations made in the petition at the time of the hearing. The Court may call for the attendance of the debtor, in case the application was presented by a creditor or creditors. Parties are allowed time to adduce such evidence as may be necessary for proving the case of either party and the Court takes substance of the evidence adduced before it. If the applicant fail to make out the allegations made, the Court dismisses the application (Vide sections 24 and 25). If the Court does not dismiss the application, it makes an order of adjudication, and the debtor is required to apply for final discharge within the time allowed by the Court (Vide sec 27). For the effect of an order of adjudication—read section 28. The order of adjudication made by the Court is required to be published in the local official Gazette and in such other manner as may be prescribed by the Court (Vide section 30).

For the following particulars refer to the sections given below.

(1) Protection order Sec 31 ,

(2) Debts which can be proved under the Act—
Sec 34

(3) The circumstances under which an adjudication order may be annulled—Sec 35 ,

(4) Proceedings on annulment—Sec 37 ,

(5) Compositions and Schemes of arrangement—
Section 38 ,

(6) Court's power to re-adjudge a debtor insolvent—
Section 40 ,

(7) For procedure for applying for discharge order
read Sec 41 ,

(8) Where Court may refuse to pass a final order
of discharge—Sec 42

(9) Where adjudication order may be recalled—
Section 43 ,

(10) The method of administering insolvent's
properties and proving debts —Secs 45—66 ,

(11) Right of insolvent to surplus—Sec 67 ;

(12) Appeals—Sec 75 ,

Effect of the order of discharge.

An order of discharge does not release the insolvent from

(a) any debt due to the crown ,

(b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party ;

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party ; or

(d) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure Code (Vide sec 44)

A debtor may be punished by the Court for fraud or concealment of facts or for disobedience of the Court's order—For particulars and Procedure—read sections 69 to 73

Insolvency Rulings.

Residence of the applicant.

Under Section 6, sub section (2) of the Insolvency Act it is not necessary for the petitioner to reside for a long time within the jurisdiction of the Court
15 C L J 457

Examination of Applicant.

Whether the witnesses are present or not the Court shall examine the debtor under Section 14 clauses 2 and 3 and then consider whether time should be given for adducing evidence 9 A L J. 233

Dismissal of application.

(1) The Judge should record his reasons for dismissal as laid down in Section 15 Where there are considerable assets it will be most disadvantageous to the creditors if the adjudication order be refused
15 C L J 631

(2) A debtor's application to be adjudicated an insolvent cannot be dismissed on the ground that he could not satisfy the judge that he was unable to pay his debts 15 C W. N 990

Appeal

(1) An appeal should be presented within 90 days
The Insolvency Act being complete in itself—the

time required for taking copy cannot be excluded.
8 A. L. J 833—11 Ind Case 107

(2) No court fee is required if J D be in custody
I L R 10 Cal 61

Application by Minor.

A minor cannot be adjudicated an insolvent.
I L R. 13 Cal. 68

Application by a person residing outside jurisdiction but carrying on business by agent within jurisdiction.

If the business be carried on by an agent within jurisdiction of the Court the principal can apply in the Court for insolvency. I L R 23 Cal. 26 P. C
See also 2 C. W N 306 at page 311.

What the creditor applicant is to prove?

He is to show that judgment debt is due and that the judgment-debtor has not been able to pay. 5 C. W N 91 at p 102

Examination of judgment-debtor by Court.

Judgment-debtor may not be examined by Court in a case when the petition is filed by a creditor.
5 C. W N 90

If the insolvent fails to attend after a preliminary order of discharge.

The final order may be passed if the insolvent shews sufficient cause explaining his absence. I. L. R 13 Cal 67

Unintentional mistakes in the application.

This is not sufficient ground for rejection of application. I. L R. 7 All. 295.

Transfer by judgment-debtor just before declaration of insolvency.

Such transfers are void—I. L. R. 6 All. 84 P. C.

A *bona-fide* purchaser is not affected. I. L. R. 2 Cal. 359

Discharge order—Discretion of Court.

Granting of discharge order is discretionary with the Court according to the circumstances of the case
I L R 19 Cal 733

Decree passed against the insolvent for amount entered in the schedule*

The decree-holder can take execution notwithstanding the insolvency proceedings I. L. R 15 Cal 762, but see I. L. R 14 All 358

If the mortgagee fails to prove his debt before the receiver :—

As a mortgage is a secured debt, a mortgagee may not prove his debt before the receiver; he may execute the mortgage decree I L R 16 Cal 592, I. L. R 21 All 227

Creditor not mentioned in the schedule

(1) Such a creditor also can prove his debt before the receiver.—I L R 11 Mad. 1

(2) He can execute his decree if any obtained by him for his dues I L R. 30 Cal. 407

Acquisition of property after vesting order

Subject to the right of the Official Assignee, the insolvent may deal with such properties as if he were

*A discharged J D cannot be arrested but an undischarged one can be I. L. R 28 Mad 152 F. B

not an insolvent I L R 8 Cal 556 See I L R 19 Bom 232 where it has been held that properties vest in the Official Assignee

Receiver *

Can a receiver sell mortgaged property ?

Without the consent of the mortgagee receiver cannot sell such property I L R 12 Bom 272 Possession of receiver is possession of the rightful owner 35 I C 17 and 2 C L J 602

Commission of a receiver

The receiver will get commission on the net assets after payment of debts I L R 15 Mad 233

Purchase of property by receiver

The Court shall not sanction such a purchase 5 C W N 91

Discharge and vesting order

Effect of discharge order on debt

Discharge of an insolvent does not discharge his debts I L R 16 Cal 592

Note —For effect of a vesting order—see I L R 99 Cal 498 F B —6 C W N 577

Balance in the hands of a receiver after satisfaction of debts

The receiver will pay the same after deducting his commission to the insolvent I L R 13 Cal 66

Insolvency order obtained by fraud

If an order is obtained by fraudulent representation the Court has inherent power to set it aside 8 C W N 468

*Receiver is an officer of the Court and not a Court 18 C W N 366 For duties and powers of receiver see 99 C W N 14 C L J 445

see sec. 18 cl (1) and page 255), and (3) the apportionment of the compensation money between persons interested in the property (See page 357)

The award of the Collector is final unless a reference is made to the Civil Court against the award. The Collector then takes possession of the land. (For the Collector's powers as to taking possession before making an award in cases of emergency Read sec. 17 and page 360)

Reference to Civil Court. (See pages 359 & 362).

Persons dissatisfied with the Collector's award regarding compensation or apportionment or both may apply to the Collector in writing for reference of the matter contained in the award to the Civil Court. The application shall state the grounds of objections and must be made (1) if the applicant was present before the Collector at the time of the award, within six weeks from the date of the award, (2) in other cases within six weeks from the receipt of the notice of the Collector under sec. 12 or within six months from the Collector's award whichever period shall first expire (Sec 18). The Civil Court tries the case on reference as a regular suit.

How compensation is determined

In determining the amount of compensation the Court takes into consideration :—

(1) the market value of the land at the time of declaration ; (See page 358)

(2) the value of crops and trees on the land ;

(3) the fact of severance of the land from other land ;

(4) damages sustained by the claimant at the time of the Collector's taking possession of the land ;

(5) the reasonable expenses of removal, if the claimant is compelled to change his residence.

(6) the *bonafide* loss incurred by the claimant from diminution of profits between the declaration and actual acquisition (See Sec 23) *

Apportionment of compensation.

When persons interested in the compensation differ among themselves as to apportionment of the same, the Collector may decide the question himself or refer the matter to the Civil Court

Statutory allowance of 15 P. C.

In addition to the market value, the Collector or the Civil Court shall award 15 per cent as compensation on the market value, in consideration of the compulsory nature of acquisition (See Sec. 18 cl (1))

Acquisition of a part of a house.

A part of a house cannot be acquired and the Collector should give the market value of the entire house under section 49.

Interest on compensation money.

Collector shall award interest at 6 p c p a on the compensation money from the time of taking possession till payment (See Section 34)

Acquisition of land of persons who are not competent to alienate (See page 361.)

Money in such cases is invested and interest is paid to such disqualified persons—Vide section 32

Note.—This section applies to cases of acquisition of —

- (1) Land belonging to a Hindu widow ,
- (2) Land belonging to an idol ;
- (3) Land belonging to charitable bodies

*Even persons getting land by adverse possession are entitled to get compensation 20 C W. N 828

Appeal

Appeal against the decision of the Land Acquisition Judge disposing of a reference lies to the High Court (See section 54) For details see page 362

Note—For form of application for claim before the Collector and for petition of reference to Civil Court—see Appendix to this part

Function of the Land Acquisition Collector

(1) He is not a judicial officer He cannot administer oath—I L R 27 Cal 820

(2) He is not a judicial officer but an agent of the Local Government I L R 30 Cal 36 Read 32 Cal 605 P C

(3) Proceedings before the Collector are administrative and not judicial I L R 32 Cal 605 (P C)

Jurisdiction of the Land Acquisition Judge

(1) Such a Judge has exclusive jurisdiction in Land Acquisition cases referred to him —10 C W N 991

(2) He cannot delegate his authority to any other officer I L R 16 Bom 277

Acquisition, nature of

(1) All interest in the land must be acquired 4 C L J 256

(2) Land may be acquired for temporary public works I L R 30 Cal 36

Notice

(1) Fifteen days notice under sec 10 shall be given to persons interested otherwise the proceeding becomes illegal 11 C W N 356

(2) If notice is not served as required by sec 9 cl 3 on the occupiers of the land the award is invalid I L R 30 Cal 576

Award—Value

(1) An award incidentally determining other questions between claimants is not final between the parties regarding those matters I L R 30 Cal. 36

Payment of compensation to a wrong person

The remedy of the real owner lies in a reference to the L A Judge He may also sue the wrong persons in a Civil Court for recovery of the amount The Land Acquisition Court can also compel the wrong person to refund the money (1) "Persons interested" in Sec 3 means Zemindar, Patnidar, and other intermediate tenureholders and raiyats (32 Cal 605 P C)

Effect of Land acquisition proceeding

It binds every person, even if he has no notice of the proceeding, and the Government acquires good title to the land acquired The remedy of the person who did not get notice is by a suit against the person to whom payment had been made through mistake (2)

Apportionment of compensation money between landlord and tenant

The compensation money is apportioned between persons having different grades of interest in the land i.e the Zemindar, taluqdar and other intermediate tenants (3) The rent payable by the tenant to the landlord is capitalised at 15 to 30 years purchase, according to the nature of the tenant's interest, and an allowance is made for a possible chance of enhance-

(1) 32 Cal 911 17 C W N 1057, 20 C W N 816

(2) 30 Cal 576 32 Cal 921

(3) 2 C W N 453 See also 12 C W N 432 and 7 C L J 284.

ment of rent (4) Money will be divided according to the different grades of interests and values thereof

Compensation for land how ascertained—The Collector or the Court is to ascertain the value of the land at the time of the acquisition or when the award is made (1) Speculative rise in price of land is not taken into consideration in making valuation (2), nor is the change in the character of the land, after declaration and before award, is taken into consideration in making the award But when the owner uses the land for any particular purpose, he is entitled not only to the market value of the land but also to the expenditure which he may have to incur for getting similar advantage elsewhere (3), values of trees, buildings and lands have to be determined in ascertaining compensation payable to the owner (4). If the land is specially fit for any particular purpose, that has also to be taken into account in ascertaining the value of the land (5). When the land has reasonable frontage but is of considerable depth, it is divided into belts according to distance from the road, and separate valuations are fixed for portions included in those belts. (6) It must be noted that the Court in ascertaining valuation is bound to take into consideration the question of damage due to loss of easement (7), and also loss due to severance (8) A party cannot

(4) 28 Cal 146

(1) 25 Cal 194.

(2) 26 Bom 1 P C

(3) 25 O W N 677

(4) 30 Mad 151

(5) 44 Mad 264.

(6) 11 C L J 612 14 O W N. 134

(7) 14 Cal 423

(8) 28 Cal 585

even waive his right to compensation for land acquired i.e he must get his compensation whatever his conduct might have been, (1) and the Collector is bound to award compensation for any land acquired by him. Even a person acquiring title by adverse possession is entitled to get compensation (2)

But a purchaser of non transferable occupancy holding purchasing the property without landlord's previous consent is not entitled to any compensation (3). In making an award the Collector or the Land Acquisition Judge cannot assume the existence of a hypothetical tenant and value the land by adding the respective values of the interests of the landlord and the tenant. Such a principle is unsound (4)

Evidence necessary for displacing the Collector's award.

Compensation for land acquired cannot be ascertained with anything approaching mathematical accuracy and the Court has to see whether the evidence adduced displaces the finding of the Collector. Where the claimant wrecklessly adduces evidence of grossly exaggerated valuation, the Court rejects such evidence (5). But the land acquisition Court has no jurisdiction to reduce the claim to any amount less than that awarded by the Collector (See sec 25 of the L A Act and 70 I C 82)

(1) 25 C L J 476

(2) 20 C W N 828

(3) 17 C W N 1057

(4) 31 C L J 204

(5) 22 C W N 659

Reversioner's claim to compensation

A reversioner can claim also a higher amount before the L A Judge than that claimed by the widow before the Collector (5)

A party after award may bring a suit for damages which he could not foresee at the time of the award
I L R 34 Cal 470

Possession

The Collector can take possession of the land under sec 16 of the Act without giving any previous notice I L R 30 Cal 576 .

Waiver of Compensation for Land *

(1) The Collector or the Court shall ascertain the value of the land at the time of the award in the way stated before and the owner must get it no matter whether he waived his right to the compensation or not, as a party cannot legally waive his right to compensation I L R 18 Cal 99 P C (See page 359)

Land Acquisition Court can consider question of possession and title of claimant 20 C W N 1028

Apportionment **

The compensation money should be apportioned between persons having different grades of interest in the land e g the Zeminder Talukder, and other intermediate holders—2 C W N 453 See also 12 C W N 432 and 7 C L J 284

(5) 45 Mad. 421

* For mode of valuing land by dividing it into belts according to distance from road etc—Read 11 C L J 612 14 C W N 134

** For apportionment between Patnidar and his landlord—Read 46 C L J 301 and 211

Suit instead of Reference

(1) If any money is paid by the Collector to any person not entitled to get the same the owner can recover the amount by a suit without making any reference 7 C W N 538

(2) A Civil suit lies for declaration of right to a share of compensation money wrongly awarded — I L R 14 Mad 46

(3) Questions regarding the title to the compensation money and for apportionment may be determined either by reference or by civil suit between the parties 10 C W N 991

Land belonging to persons incompetent to alienate

(1) In cases of lands belonging to Hindu widows—the compensation money may be invested in purchasing suitable property I L R 21 All 354

(2) If the land is trust or charitable property—the compensation money should be invested in Government securities I L R 29 Mad 117

Interest—Reference

Reference can be made if interest on the compensation money is not allowed at 6 p c p a from the date of taking possession

Interference of Civil Court in acquisition proceedings

The Civil Courts have no jurisdiction to interfere with proceedings for acquisition of land—I L R 30 Cal 36

Reference to Civil Court

(1) Detailed grounds for reference need not be mentioned in the application of reference—24 C W N 716 If the Collector refuses to make referen

as desired by the party, the order o refusal can be set aside by High Court on *revision*—12 C W. N. 241.

(2) The matter under reference before the L. A. Judge *cannot be tried by another civil Court* in a regular suit.—10 C. W. N. 991.

(3) Person asserting himself as *landlord* can make reference—5 C. L. J. 301.

(4) *Any person* claiming interest in compensation money can make a reference—10 C. W. N. 195

(5) The L. A. Judge *cannot enq ure* into any matter which has not been referred to him by the Collector I. L. R. 34 Cal. 451 *

(6) Questions about *area* must be determined by reference. 10 C W. N. 991

Appeal.

Under section 54 an appeal lies to the High Court from the award or from any part of the award made by the Civil Court on reference. An order apportioning the compensation money is also appealable. I. L. R. 32 Cal. 921.



* For remedy where there is no reference—See 36 J. C. 621

APPENDIX TO PART III.

District Court petitions, Land acquisition claims, Reference, etc.

The laws under which the above petitions are made have been given in detail in this part Forms of petitions are given below —

No. 1. Petitions for Probate

In the Court of the District Judge
District Delegate of 24-Parganas.

[Petition for Probate]

The humble petition of of

Most respectfully sheweth—

1 That the writing hereunto annexed is the last Will and Testament of of who died at on the of 1911, within the jurisdiction of this Court, where he had property described in the annexed affidavit, at the time of his death, and that the said writing was duly executed by the said testator

2 That the petitioner is the son of the testator and is the executor appointed by the said Will

3 That the amount of assets which are likely to come to your petitioner's hands is Rs as fully set forth in the Annexure A and the amount of debts—Rs is set forth in Annexure B. of the accompanying affidavit

4 That to the best of your petitioner's belief, no application has been made to any other Court f

probate of the said Will or for Letters of Administration in respect of the estate left by the testator

Under the circumstances, your petitioner prays that probate of the annexed will be granted to your petitioner

And your petitioner, as in duty bound, shall ever pray

I the petitioner do declare that what is stated herein is true to the best of my information and belief

[Signature of Applicant]

I one of the witnesses to the last Will and Testament of the testator mentioned in the above petition do hereby declare that I was present and saw the said testator affix his signature to the Will annexed to this petition

[Signature of a witness to the Will]

Note—It should be noted that a petition for Probate should not be made to a District Delegate unless the deceased had a fixed place of abode within the jurisdiction of such a Delegate. If the application is before a District Judge it is not essential that the deceased should have had a fixed place of abode within his jurisdiction. It will be enough if the deceased had some properties situate within his jurisdiction. These facts should be clearly stated in the petition for probate. See section 276 of Act XXXIX of 1925

N B—Probate duty has to be deposited by *Chalan* in Court. The petition shall be accompanied by an affidavit stating the properties left and debts due by and to the estate of the deceased as given in the form of affidavit (for the form of affidavit see pages 308 to 310)

No 2* Petition for Letters of Administration

In the Court of the, etc

The humble petition of of

Most respectfully sheweth —

1 That the late of died at on the day of 19 within the jurisdiction of this Court where he had property described in the annexed affidavit at the time of his death

2 That the deceased at the time of his death left the following relatives at the places given below —

(1) Widow—Sreemati

Address

(2) Mother—Sreemati

Address

(3) Daughter—Sreemati

Address

(4) Brother—Babu

Address

(5) Son (Petitioner)

3 The petitioner prays for letters of administration in respect of the estate of the deceased, being the only son of the deceased

4 Same as para 3 of petition No I

5 That the deceased did not make any Will and that to the best of your petitioner's belief no application has been made for letters of administration to the estate of the said deceased

(6) Under the above circumstances your petitioner prays that letters of administration to the estate of may be granted to your petitioner.

And your petitioner, as in duty bound, shall ever pray

* Under sec 278 of the I S Act (Act 39 of 1925)

I the petitioner do declare that what is stated in my petition is true to the best of my knowledge and belief

[Signature of applicant]

No 3—Form of caveat

In the Court of the District Judge of .

Caveat under Section 284 (1) of Act XXXIX of 1925

The humble petition of of Thana
District

Most respectfully sheweth —

1 That your petitioner is interested in the estate of deceased who died on day of at

2 Your petitioner by filing this caveat prays that—
Let nothing be done in the matter of the estate of late of who died on the day of 1912 at without notice to the petitioner

[Signature]

NB—Court fees —Court fee stamp to be affixed to the petition *

No 4 —Application under Act XXXIX of 1925 for collection of debts due to the estate of a deceased person

In the Court of the

The humble petition of son of of

Most respectfully sheweth —

1 That your petitioner makes this application under Act 39 of 1925 for certificate for collection

* Rs. 10 is the fee in Bengal Assam Madras and Bombay In U P the fee is Rs 5 in respect of property valued up to Rs. 500 and over that Rs 10 In the Punjab C 1 and Behar and Orissa the duty is Rs 5

of debts due to the estate of the deceased
of

2 The said of died at on the
day of 19

3 That the deceased ordinarily used to reside at the time of his death at within the jurisdiction of this Court and that the deceased left properties described in Schedule A within the jurisdiction of this Court

4 That the descriptions of the near relatives of the deceased with their respective residences are given below —

(a) Father	of	P S	Dist
(b) Widow	of	"	"
(c) Brother	of	,	,
(d) Son	(Petitioner)	,	,

5 That the petitioner being the only s n of the deceased makes this application for grant of a certificate

6 That there is no impediment under section 370 or any other provision of this Act to the granting of the certificate to the petitioner The deceased did not make any Will and no letters of administration or probate of any Will in respect of the estate of the deceased has been taken or applied for

7 The debts and dues in respect of which the certificate is applied for are mentioned in the Schedule B annexed herewith

8 Your petitioner prays that a certificate may be granted to him for collection of debts (mentioned in Schedule B) and interests due thereon

And your petitioner, as in duty bound, shall every pray

I, _____, petitioner declare that the contents of this application are true to the best of my knowledge and belief

(Signature of applicant)

Schedule A of properties of the deceased within the jurisdiction of this Court

Schedule B Properties of the deceased in respect of which the certificate is prayed for

Notices—Besides issuing general citations, notice of the application has to be given to the near relatives of the deceased

No. 5 —Petition for appointment of a guardian of a minor under Act VIII of 1890.

In the Court of the District Judge of _____.

Petition for appointment of a guardian of minor
Sreeman

The humble petition of _____ of

Most respectfully sheweth —

1. That your petitioner makes this application for being appointed guardian of the person and property of minor _____ son of _____ of _____

2 The required particulars are given below —

- | | | |
|-------|---------------------------------|---|
| (a) i | Name of the minor | Sree |
| ii | Sex | Male, |
| iii | Religion | Hindu, |
| iv | Date of birth | The 27th of September 19____, |
| v. | Ordinary residence of the minor | Behala, within the jurisdiction of this Court |

(b) The nature, situation and approximate value of the property of the minor are given in the Schedule A annexed herewith

(c) The aforesaid minor has no relative besides his mother—the petitioner in this case—and an uncle (father's brother) Babu residing at

(d) No guardian of person or property of the aforesaid minor has been named by his father in any Will

(e) No application for appointment of a guardian of person or property of the minor was made in any Court

(f) This application is made by your petitioner for management of the properties and for protection of the person of the said minor

(g) Under the circumstances set forth above, your petitioner prays that she may be appointed guardian of the person and property of her son the aforesaid minor

And your petitioner as in duty bound shall ever pray

I petitioner do hereby declare that I am willing to act as guardian of the person and property of my minor son Sreeman and that the contents of this petition are true to the best of my knowledge and information

[Signature of Applicant]

I of and I of declare that this petition was signed by the applicant in our presence

} Witnesses

(A) Schedule of property of the minor which are likely to come to the petitioner's hands

**No 6—Petition for appointment of a guardian of
a lunatic under Act IV of 1912.**

In the Court of the District Judge of .

Petition for appointment of a guardian of lunatic

The humble petition of son of of

Most respectfully sheweth —

1 That your petitioner files this application for being appointed guardian of the person and property of his lunatic brother of

2 That the said lunatic is aged years and is a Hindu by religion, he is residing with the petitioner at his house at within the jurisdiction of this Court

3 That the lunatic has no near relation besides the petitioner and the lunatic's wife Sreemati who is residing with the lunatic at the petitioner's house

4 That no guardian of the person and property of the said lunatic has been appointed by any competent Court of Justice

5 That the said lunatic is of unsound mind and incapable of managing his properties and taking proper care of his person and has been so since the month of 191

6 That the nature, situation and approximate values of the properties of the said lunatic are given in the Schedule A annexed herewith

7. That this application is made for the appointment of a guardian of the lunatic for taking proper care of his person and for management of his properties

8. That your petitioner prays that he may be appointed a guardian of the person and property

of the aforesaid lunatic after making necessary enquiries about the lunacy of the said

And your petitioner as in duty bound shall ever pray

I the petitioner do hereby declare that I am willing to act as the guardian of the person and property of the said lunatic and to take proper care of his person and property and that the contents of this petition are true to the best of my knowledge and belief

[Signature of Applicant]

(A) Schedule of properties of the lunatic giving approximate values thereof [See page 336 and read 22 C W N 547]

No 7—Insolvency Petition.

In the Court of the District Judge,

Hoogly

Insolvency Jurisdiction

The humble petition of of the judgment debtor in suit No of of the Court of of

Most respectfully sheweth —

1 That your petitioner ordinarily resides at within the jurisdiction of this Court

2 That a decree was passed by the Third Court of the Subordinate Judge, of Hoogly against your petitioner in suit No of of that Court and that in execution of the said decree the said Court has attached your petitioner's property (or that your petitioner has been arrested in execution of the said decree and that he is now in custody of the Court at or imprisoned at .)

3 That the amounts and particulars of all pecuniary claims against your petitioner together with

the names and residences of his creditors, so far as your petitioner has been able to ascertain, are given in Schedule A annexed hereunto.

4. That the amount, kind and particulars of your petitioner's properties and values thereof are fully set forth in Schedule B annexed hereto, and the said properties are to be found in the places mentioned in the said Schedule, and your petitioner is willing to place the said properties at the disposal of the Court.

5. Your petitioner prays that he may be declared an insolvent and discharged.

And your petitioner as in duty bound shall ever pray.

Schedule A.

Schedule B.

I.....the above petitioner do hereby affirm and declare that the particulars set forth above are true to my knowledge.

Signature of Applicant.

No. 8—Claim in Land Acquisition case.

[No Court-fee is required.]

To

The Land Acquisition

Deputy Collector, Alipur.

Project.....

Case No.....of.....

The humble petition of.....son of.....of.....

Most respectfully sheweth :—

1. That your petitioner is the *mourasi mokerari* tenant of the land.....bearing.....plot numbers 23, 37, 84 of the said project and that Babu.....of.....is the superior landlord of the petitioner and that the

said landlord gets Rs as rent every year from the petitioner in respect of the above plots

2 That the area of said plots is B C chittaks square feet and that the market value of the said land is Rs per bigha

3 That out of the value of the land the landlord is entitled to get 20 times the rent payable to him and the balance should be awarded to the petitioner

4 That the value of the building comprising rooms, verandah, etc standing on plot No is Rs and the petitioner is entitled to get the entire compensation money for the said building

5 That according to the calculations given in the Schedule annexed hereunto your petitioner is entitled to get Rs with 15 p c statutory allowance, that is, in all Rs for the land and building acquired

And your petitioner, as in duty bound, shall ever pray

Schedule of account

Total value of Land	B	}	Rs	as	p
C Chatat Rs.	per bigha		"	"	"
after deducting landlord's share			"	"	"
Value of building			"	"	"
Total			,	"	
S. A 15 p c			"	"	,

Total " " "

N.B—The application should not be entitled 'In the Court of the L. A. Collector' as the L. A. Collector is not a judicial officer and his Office is not a Court I L R 30 Cal 36 See rulings given under the Land Acquisition Act in Part page 352

No 9—Reference

[Twelve annas Court Fee]

To The Land Acquisition
 Deputy Collector

Project
 Case No

of

[Petition of Reference]

The humble petition of son of of
 Most respectfully sheweth —

That your petitioner is aggrieved with the award of valuation and apportionment made by this Office in respect of plot No of the above project and he prays that the matter be referred to the Civil Court under Sec 18 of the Land Acquisition Act for determination of the proper valuation of the said plot No of the said project and for apportionment of the compensation money between your petitioner and his tenant according to law

2 That the property is worth Rs and not Rs as awarded by the Collector

3 That the tenant is entitled to get Rs as price of his huts standing on plot No and that the balance of the compensation money¹ should be awarded to your petitioner and that no part of the value of the land should be awarded to the tenant who was a tenant at will of the land under your petitioner

Your petitioner prays that reference be made to the Civil Court in the above terms

And your petitioner as in duty bound shall ever pray

Signature

[See page 352 and read 24 C W N 716]

PART III A.

I

LAW AND PROCEDURE

AS TO

- (1) Appeals**
- (2) Review**
- (3) Revisions**

WITH SHORT NOTES

— AND —

**Models for drawing up memorandum of
appeal, and application for review**

II

- (a) Arrangement of Records in suits and
cases**
- (b) Rules for taking copies**

CHAPTER I.

Appeal

Notes on Appeals in General

An appeal lies only if it is expressly given by the Act and not otherwise. So objections as to the maintainability of appeals may be taken wherever occasion arises. When such an objection is taken it is for the appellant to shew that he has the right to appeal. 21 M L J 77 23 C L J 443. Even a successful party can prefer an appeal if his contention was not accepted by the trial Court but he succeeded on other grounds. N W P H C R 120 25 N L J 379 at 384 21 All 117. A benamdar of a defendant against whom a decree has been passed can prefer an appeal. 2 A L J 702. No person has a right to prefer an appeal unless he is a party to the suit. 12 P W R 1919. When there was contest between the defendants one defendant may prefer an appeal disputing right of another defendant. 18 Bom 520. An order rejecting a plaint has the force of a decree and is appealable. From decisions in cases valued upto Rs 5000 appeal lies to the District Court and not to High Court no matter even if the decree be for an amount more than Rs 5000. 20 Bom 265 17 Cal 680. Jurisdiction cannot be conferred upon a Court of appeal by consent of parties, 16 C L J. 77, 34 Bom 171 and valuation as given in the plaint determines the forum of appeal. 10 All 524. It must be remembered that an appeal lies even from an *Ex parte* decree. No appeal lies against a consent decree but may lie against a decree passed ~~on~~ compromise if the decree embodies terms be

the scope of the suit or where the fact of compromise is disputed 30 Mad 421, 66 I C 258

If a party does not prefer an appeal from a Preliminary decree he cannot afterwards challenge the Preliminary decree in an appeal against the final decree (Sec 97 C P Code)—38 C L J 111 If final decree is passed before the time allowed for appeal against a Preliminary decree expires—appeal may be preferred against both the decrees If a Preliminary decree be set aside on appeal the final decree based on such Preliminary decree becomes inoperative—17 C W N 868—19 I C 630

Ordinarily an Appellate Court does not reverse decree of trial Court unless the decision affected the merits of the case and resulted in the failure of justice If the trial Court improperly admitted evidence but there be other legal evidence in the record to justify the finding—the appellate Court will not interfere—6 B L R 495 (499) 10 C L J 38 If a document not properly stamped had been admitted in evidence the Collector can take steps but the appellate Court has no right to question the admissibility of the document 71 I C 42 51 I C 88 18 C W N 697 The grounds on which a second appeal lies have been mentioned in sec 100 of the C P Code If there be substantial error or defect in procedure affecting the merits of the case or if the decision in the case be contrary to law or if the Court failed to determine any material issue in the case a second appeal will lie The High Court does not interfere with the findings of fact but after the amendment of sec 103 in 1926 the powers of High Courts have been widened The amendment is referred to below for easy reference

New amendment of 1926 of sec 103 C P Code

By the amending Act (Act of 1926)

The High Courts in second appeal determine any issue of fact necessary for the disposal of the appeal which has not been determined by the lower appellate Court or which has been wrongly determined by such Court by reason of any illegality omission or error or defect as is referred to in subsec (1) of sec 100. So the powers of the High Courts have now been much widened to prevent frequent remand of cases for determining questions of fact

Appeal from decree

Save as otherwise expressly provided in the body of the C P Code or by any law for the time being in force an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from decisions of such Court

N B—Exceptions—Appeal does not lie from decrees passed by a Small Cause Court from decrees in rent suits as laid down in section 153 of the Bengal Tenancy Act also in cases under section 9 of the Indian Specific Relief Act

Appeal lies from an original *Exparte* decree but not from a consent decree [See section 96 of the C P C]

Appeal from orders

An appeal shall lie from the following orders and save as otherwise expressly provided in the body of the C P Code or by any law for the time being in force from no other orders —

(a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court ;

(b) an order on an award stated in the form of a special case ;

(c) an order modifying or correcting an award ;

(d) an order filing or refusing to file an agreement to refer to arbitration ;

(e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration ;

(f) an order filing or refusing to file an award in an arbitration without the intervention of the Court ,

(g) an order under sec. 95 C P. C. awarding compensation for obtaining arrest, attachment or injunction on insufficient grounds ,

(h) an order under C. P. Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such order is passed in execution of a decree.

N. B—No appeal lies from any order passed in appeal under the above clauses [See section 104, C. P. C]

(i) an order under Rule 10, Order VII of the C P. Code returning a plaint to be presented to the proper Court.

(j) an order under Rule 10, Order VIII pronouncing judgment against a party ;

(k) an order under Rule 9 of Order IX, rejecting an application in a case open to appeal for an order to set aside the dismissal of a suit ;

Note—This rule has no application in execution and sale set aside cases. 19 C W. N 25

(l) an order under Rule 13, Order IX, rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*

(m) an order under Rule 4 of Order X pronouncing judgment against a party,

(n) an order under Rule 21 of Order XI,

(o) an order under Rule 10 of Order XVI for the attachment of property,

(p) an order under Rule 20 of Order XVI pronouncing judgment against a party,

(q) an order under Rule 34 of Order XXI on an objection to the draft of a document or of an endorsement,

(r) an order under Rule 72 or Rule 92 of order XXI setting aside or refusing to set aside a sale,

(s) an order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit,

(t) an order under Rule 10 of Order XXII giving or refusing to give leave,

(u) an order under Rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction,

(v) an order under Rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit,

(w) an order under Rule 3 or Rule 8 of Order XXXIV refusing to extend the time for the payment of mortgage money,

(x) orders in interpleader suits under Rule 3 or Rule 4 or Rule 6 of Order XXXV,

(y) an order under Rule 3 or Rule 4 or Rule 6 of Order XXXVIII,

(z) an order under Rule 1, Rule 2, Rule 4 or Rule 10 of Order XXXIX,

(aa) an order under Rule 1 or 4 of Order XL,

(bb) an order of refusal under Rule 19 or Rule 21 of Order XLI, to re admit or re-hear an appeal

(cc) an order under Rule 23 of Order XLI, remanding a case where an appeal would lie from the decree of the Appellate Court,

(dd) an order made by any Court other than a High Court refusing the grant of certificate under Rule 6 of Order XLV,

(ee) an order under Rule 4 of Order XLVII granting the application for review.

It is necessary here to know the meaning of the word "*Decree*" because *certain orders* (e.g., under sections 47 and 144) *having the force of a decree* are also open to appeal besides those mentioned above

"*Decree*" means the formal expression of an adjudication which so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144 but shall not include —

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default

Note —The principle of *res judicata* applies to questions determined under sec 47 I L R. 14 Cal 640 F B

Orders which are considered as decrees, and from which appeals can be preferred (For Principle—Read 29 Bom 71 and 20 C. L. J 512 at page 515)

(1) An order dismissing an application under Order 21, Rule 2 and refusing to certify a payment or adjustment 7 C W N 172

(2) An order granting or rejecting an application under Order 21, Rule 71 for recovery of the loss occasioned by re-sale of property I L R 16 Cal 535 see also I L R 25 Cal 99 and 2 C W N 408

(3) An order refusing to confirm a sale I L R 25 Cal 175—1 C W N 656, see also 4 C W N 692

(4) An order requiring the decree-holder to give security under section 96—I L R 8 Cal 477

(5) An order for attachment and sale of property in execution of decree—I L R 8 Cal 28 P C

(5) An order allowing or disallowing an application for execution by a transferee of a decree under Order 21, Rule 16—I L R 27 Cal 670

(7) An order refusing an application under sec 173 of the Bengal Tenancy Act 1 C W N 534

Note—But an order under section 174 of the B T Act is not appealable—1 C W N 30

(8) An order declaring a sale invalid for non payment of landlord's fee under section 13 of the B T Act—7 C W N 591

(9) An order under Order 21 Rule 19 (old 313A) is appealable where decree holder is the auction-purchaser—I L R 28 Cal 73

(10) An order setting aside sale on the ground of fraud and irregularity—I L R 26 Cal 539

Note—Mere allegation of fraud without an attempt to prove it is not sufficient 5 C W N 124 An order refusing to restitute an application for setting aside sale dismissed for default is not appealable 19 C W N 25

(11) An order fixing mesne profits—5 C W N 5 P. C., see also 6 C W. N 409

General

Orders which are appealable.

(1) An order or decision passed without jurisdiction is appealable 27 C L J 115

(2) An order refusing to transfer a decree for execution to another Court is appealable 8 C W N 575

(3) An appeal against both preliminary and final decree may be filed 33 I C 137 (vide page 378)

Note—An order by which Court allows a plaintiff to withdraw his suit with liberty to sue again is not a decree and is therefore not appealable. 44 Cal 454 see *contra* 41 Cal 632

(4) An appeal lies from an order passed under Order 25, Rule 2 rejecting an application in an appealable case to set aside the order of dismissal passed for not furnishing security—Vide Order 43, Rule 1, clause (n)

5 An order refusing to appoint a Receiver is appealable 31 Cal. 495

(6) For appeal against order of costs only—Read 3 P L J. 433.

(7) An order directing issue of a commission is not a judgment and is therefore not appealable. 11 B. L. R 241 *contra* 30 Mad. 143 This case has been overruled by 35 Mad. 1

(8) An appeal lies from an order under Order 34 Rule 3 refusing to extend the time of payment of mortgage money—Order 43, Rule 1 clause (o)

(9) In a mortgage suit valued at less than Rs 5 000 an appeal lies to the District Judge even if the sum decreed be over Rs 5 000 41 All 384

(10) An appeal lies under certain circumstances from an order granting a review 30 C L J 250

(11) An order returning a plaint is appealable 42 All 74

(12) An appeal lies from an order under Rules 90 and 92 of C P Code setting aside a sale—but no second appeal lies 41 I C 753 39 All 191

(13) No appeal lies from an order declaring a Receiver liable for a specific sum of money 4 Pat L J 636

(14) An order rejecting an appeal as time barred is appealable 7 All 42 12 Cal 30

(15) An order rejecting an appeal as insufficiently stamped is appealable 7 All 887

Orders passed in execution proceedings but which are not appealable

(1) Order refusing to amend a sale certificate—I L R 23 All 476

(2) An order amending a sale certificate—I L R 26 Cal 529=3 C W N 374

(3) An order setting aside sale under section 173 of the B T Act—I L R 21 Cal 825

(4) An order refusing an application by an assignee of an auction purchaser to be placed on the record—3 C W N 276

(5) An order refusing to discharge a surety of a judgment debtor—I L R 15 All 183

(6) An order passed in a partition suit subsequent to the preliminary decree appointing a commissioner to effect partition I L R 24 Cal 725 F B

(7) An order directing accounts to be taken in an administration suit—I L R 9 Cal 773

(8) An order rejecting application for review of an order dismissing an execution case for non payment of process fee—4 C W N 39

Note—For principle to determine if an order is appealable or not see 20 C L J at page 515

General

Orders which are not appealable

(1) No appeal lies from an order by which an application for restoration of a rehearing case is dismissed for default—49 I C 745

(2) Order refusing to stay execution is not appealable It is not order under Section 47, C P Code 25 C W N 555

(3) A party receiving benefit of an order *e g* after receipt of costs ordered cannot appeal against that order 21 C W N 232

(4) No appeal lies from orders passed in execution cases arising out of Small Court suits 16 C L J 96

(5) No appeal lies from an order by which a suit abates under Order 22 Rule 3 of C P Code—39 Mad 488

(6) No appeal lies against an order rejecting an application for attachment of defendant's property before judgment 23 C L J 392 An appeal lies

if the application is allowed Vide Order 43 Rule 1, clause (g)

(7) An order by which a person is held not to be a legal representative is not appealable § 38 I C 833

(8) No appeal lies from an order by which a suit is dismissed for default of both parties 39 Cal. 341.

(9) An order passed under section 100 or 103 of Order 21 of C P. Code is not appealable 42 Bom. 10

(10) No appeal lies against an order setting aside or confirming a sale in first appeal 17 C. W N 524

(11) An order of remand passed with the consent of parties is not appealable 12 C. W N 590

(12) No appeal lies from an order passed in a claim case under Order 21, Rule 58 But see the view of the Madras High Court in 25 Mad. 555

Limitation

An appeal shall be presented within the period prescribed (30 days for appeal to District Court and 90 days for appeal to High Court) in the Limitation Act—see Schedule II of the Limitation Act Time required for taking copies is excluded

Second appeal.

A second appeal lies to the High Court on the following grounds namely —

(1) The decision being contrary to law or usage having the force of law

(2) The decision having failed to determine some material issue of law or usage having the force of law.

(3) A substantial error or defect in the procedure provided by the C. P. Code or by any other law for

the time being in force which may possibly have produced error or defect in the decision of the case upon the merits. [See sec. 100. C P Code.]

Note—But no second appeal lies in any suit of the nature cognizable by Courts of Small Causes when the amount or value of the subject matter of the original suit does not exceed five hundred rupees [See sec 102, C P C]

How appeal to be presented.

Every appeal shall be preferred in the form of memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and of the judgment on which it is based *

The memorandum shall set forth concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative and such grounds shall be numbered consecutively.

Certificate by a pleader.

In any case in which the memorandum is presented by a pleader the grounds of appeal shall be drawn up and signed by a pleader, who at the foot of the memorandum of appeal should subscribe the following statement.—“I certify that I have examined the record in this case and that in my opinion there are good grounds as above set forth for this appeal and having prepared them I undertake to appear and support the appeal before the Appellate Court” When the memorandum is presented by a party and a pleader is afterwards retained to support the appeal,

* In some Provinces Judgment & decree may be filed afterwards in cases of appeals under some local Acts

the pleader should subscribe and file in Court the following statement

"I certify that I have examined the record and the grounds of appeal in this case and that in my opinion the grounds of appeal are good and I undertake to appear and support them before the Appellate Court "

Form of Appeal.

In the Court of the District Judge of——

Appellant	Respondent
——son of——	1——
resident of——Thana	2——
——District——	

The above named plaintiff appellant being dissatisfied with the judgment and decree passed by the Munsiff of—— 3rd Court, in Title Suit No —— of 19——begs to prefer this appeal on the following among other grounds —

Grounds of appeal

(1) That the lower Court has erred in law in holding that the suit is barred by limitation

(2) That the lower Court on the evidence before it should have believed the plaintiff's case

(3) That the lower Court should have held that that the court-fee paid on the plaint was sufficient

(4) That . .

(5) That

"I certify, etc [as given in the form before] "

[Signature of pleader]

[For Special rules—relating to appeals—framed by some of the High Courts see the General Appendix at the end in Part X]

CHAPTER II.

Review

What can be reviewed ?

Any person considering himself aggrieved

(a) by a decree or order from which an appeal is allowed by this Code but from which no appeal has been preferred

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for review of judgment to the Court which passed the decree or made the order and the Court may make such order thereon as it thinks fit [See section 114, C P C]

Who can make an application for review ?

Any person considering himself aggrieved by any decree or order specified above and who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time the decree was passed or order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason desires to obtain a review of decree passed or order made against him may apply for a review of judgment to the Court which passed the decree or made the order

A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except when ground of such appeal is common

to the applicant and appellant or when being a respondent he can present to the appellate Court the case on which he applies for the review

To whom application to be made.

An application for review of a decree or order of a Court not being a High Court, upon some grounds *other than* the discovery of such new and important matter or evidence as is referred to above or the existence of a clerical or arithmetical error apparent on the face of the decree shall be made only to the Judge who passed the decree or made the order sought to be reviewed but any such application may, if the judge who passed the decree or made the order has ordered notice to issue, be disposed of by his successor—[See Order XLVII]

Form of review.

The provisions as to the forms of preferring appeals shall apply *mutatis mutandis* to applications for review The grounds of review shall be certified by a pleader as in case of appeals An application for review should set forth concisely the grounds. 5 C W N 485, and the grounds must be existing at the date of the decree 4 C W N 725 P. C

English form.

In the Court of the Subordinate Judge, Midnapur.

Application for review.

The humble petition of——

of———plaintiff in

Suit No ————of this Court

Most respectfully sheweth —

1 That your petitioner as a plaintiff brought Suit No —of——1912 in this Court and that the said suit was dismissed by this Court on——

2 That your petitioner being aggrieved by the judgment and decree passed in the said suit begs leave to prefer this application for review of the said judgment and decree on the following grounds —

(a) That the suit is not barred by limitation as has been held by the Court and that on the face of the judgment it appears that the Court has taken an erroneous view of law in computing the period of limitation from the date of the bond in suit but that when the Court believed the payments endorsed on the back of the bond the Court should have computed the period of limitation from the date of the last payment and held that the suit was not barred by limitation

(b) That the Court should have held that when the execution of the bond was admitted the onus of proving the non receipt of a part of the consideration money was on the defendant and that he had failed to discharge the said onus

(c)

(d)

Your petitioner prays that on the grounds set forth above the Court may be pleased to grant this application for review and set aside the judgment and decree of dismissal and after hearing the parties be pleased to pass a decree in the case in favour of your petitioner

And your petitioner as in duty bound shall ever pray

I certify that I have examined the record of the case and that in my opinion there are good grounds of review as set forth above and having drawn up

this petition I undertake to appear and support the application at the time of hearing

Signature of pleader.

Rulings

(1) Orders passed under the Guardians and Wards Act cannot be reviewed 15 I C 559 Punjab case But an order passed in Insolvency Proceedings can be reviewed 20 A L J 517

(2) When a decision follows a ruling which is afterwards overruled review should be granted 15 W R 143

Note—But subsequent Full Bench or Privy Council decision laying down a different view of the law is not sufficient ground for review 9 W R 10⁹ 181 F B approved in 1 L R 8 Cal 700 See 19 W R 189—read also 1 L R 24 Cal 334 at page 336

(3) Review may be granted after dismissal of mortgage suit to bring in necessary party 5 C W N 83

(4) Fraud upon a party to a compromise decree is good ground for review 10 C W N 286

(a) Error of law on the face of the judgment is good ground for review—I L R 14 Cal 627

(5) When plaintiff allows his rights under Or IX R 4 to be barred Court cannot reinstate suit by way of review 2 C W N 318 Distinguished 10 C W N notes 259

(6) The fact that court fee on the plaint at first held to be inadequate is afterwards found to be sufficient is good ground for granting review—I L R 27 All 695

(7) When a next friend withdraws from a suit the minor through another next friend may reopen the suit by review—I L R 29 Cal 735

(8) Mis reading or mis conception of evidence is good ground for review 4 C L J 198

(9) Review was granted when there was error apparent on the face of the record I L R 32 Bom 540

(10) After dismissal of a suit admission by defendant that plaintiff's case was true is no ground for admitting review—14 C W N 244=11 C L J 26

(11) A Court which has dealt with a suit under a wrong section has power to set aside its order on review on sufficient reasons I L R 31 Mad 414

(12) No review is allowed on the ground that the judgment is tainted with fraud 3 C L J 119

(13) Court's omission to try a point is good ground for review—16 W R 134 150

Note—In granting review Court should not travel beyond grounds mentioned in the application 5 C W N 485

Order of withdrawal—An order of withdrawal of a suit can be reviewed—I L R 15 Bom 370

Ex parte judgment—An *ex parte* judgment may be reviewed on sufficient grounds—20 W R 284

Claim case—Order disallowing claim can be reviewed—7 W R 79

Execution case—Order passed in execution case can be reviewed—2 C W N 606

Sale certificate—A review can be granted for amending the boundaries in a sale certificate—I L R 26 Cal 529

Sanction proceeding—Court cannot review an order passed on an application for sanction to prosecute—I L R 32 Bom 203 See 12 C W N 605

If appeal is dismissed under O. XLI, R. 11, can lower Court review its judgment ?

In such a case lower Court has no jurisdiction to review its judgment—4 C. L. J. 566.

Note—But while appeal is pending order can be passed by lower Court on review. I L. R. 17. Mad 602

Different stages in a review case.

Petition of review involves 3 stages :—

(1) *Exparte* application, which Court may reject, or on which Court may issue a rule :

(2) The rule may either be rejected or granted :

(3) If the rule is granted, the case is heard on the merits and may result in repetition of former decree or some variation of it. (Vide I L. R. 30 Bom. 57.)

Notice.

Notice of review on opposite party is essential—otherwise the order passed in a review case does not bind the opposite party.—42 Cal. 433 Read 19 C. W. N. 1077.

Who can entertain an application for review.

The Judge who actually decided the case and not the Judge who simply signed the decree can entertain an application for review. 20 C. W. N. 391, I. L. R. 5 Cal. 110 at p. 112. A Judge temporarily in charge of the Court cannot entertain an application for review.—17 C. W. N. 403.

Second application, if lies.

Court may admit a second application for review after the first is rejected—I. L. R. 22 Cal, 784. See 7 C. L. J. notes 16.

Who cannot grant review.

A Judge (not of the High Court) other than the Judge who delivered judgment cannot grant application for review on the ground that leave had not been granted to a minor's guardian to refer to arbitration—8 C. L. J. 204.

Additional evidence.—Law governing a case after review is admitted.

Having admitted review, Court can call for additional evidence—16 W. R. 78.

After review is admitted Court shall follow the ruling then in force.—7 W. R. 408.

Whether copy of decree or order should be filed.

Application for review need not be accompanied by copy of decree or order—I L. R. 17 All. 213

Court-fees—How calculated.

See Chapter on Court Fees in Part X. The stamp duty on an application for review should be calculated on the amount that would be decreed if the review were granted and not on the whole value of the suit—Vide the case of *Monohar*, I. L. R. 4 Bom. 26, but, a different view has been taken by the Calcutta High Court in the case of *Nabinchandra v. Mahomed Uzir Ali*, 3 C. W. N. 292.

Limitation.

Application for review presented after 90 days without sufficient cause is barred—13 C. W. N. notes 9. (See also S. C. C. Act in Part IX.)

Appeal.

No appeal lies from an order rejecting a review—4 C. W. N. 39. Fol. 27 C. 414.

Appeal does not lie from order granting a review except on grounds mentioned in O. XLVII, R. 7. I. C. W. N. 338.

Copy of Judgment

Should be filed with the application for review.

CHAPTER III.

Revision *

The High Court may call for record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto and if such Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity

The High Court may make such order in the case as it thinks fit

The application to be presented to the High Court shall be entitled "In the High Court of Judicature at Fort William in Bengal. To Sir .

The Hon'ble the Chief Justice of Bengal and his Companion Judges "

The application should contain a short history of the case, the grounds of revision and a prayer for calling for the record and for passing such order as as the Hon'ble Court may think fit

* When a party has remedy by a suit or in any other way High Court will not entertain an application for revision—32 Mad 334 at 336

Rent suits.

For revision of judgments and decrees from which no appeal lies see Chapter on the Bengal Tenancy Act and sec. 153 of the Act.

Small Cause Court suits.

Read section 25 of the Provincial Small Cause Courts Act In Small Cause Court cases the High Court may set aside a judgment on revision if it be not according to law, and where there was failure of justice

When the Small Cause Court having jurisdiction to deal with the matter deals with it according to law, the High Court cannot interfere in revision Vide 6 C W N 480

Notes.

(1) Order of a Court, having a jurisdiction to try the suit, returning the plaint and refusing to review the order can be set aside in revision I. L. R Bom 50, see also 1 C W. N. 626 and 3 C W. N. 581

(2) Order declaring a tout without enquiry was set aside in revision. *In Re Siddeswar Boral*, 4 C W N 36

(2) (a) There can be no revision where an appeal lies 7 All 681 (But see no 3)

(3) Order wrongly dismissing an appeal on the ground that no appeal lay can be set aside in revision I. L. R 21 Cal 935. A time-barred appeal was treated as revised petition 39 Mad 593

(4) When the party aggrieved by an order can get remedy in a regular suit, the High Court refused to set aside such order in revision—I. L. R 3 Cal. 243.

(5) The High Court refused to interfere in revision with an order of a Special Judge in regard to settlement of rent—I L R 16 Cal 596 but this case was over-ruled by the Full Bench case of *Upadhaya Thakoor v. Persidh Sing*—I L R 23 Cal 723

(6) A decree not supported by evidence can be set aside in revision—I L R 9 All. 398 followed in 10 C W N 14.

(7) An interlocutory order if made without jurisdiction can be set aside in revision—I L R 14 Cal 768 An order granting or refusing temporary injunction can be set aside in revision

(8) An order rejecting an application to set aside an order directing a suit to abate is open to revision—I L R 8 Cal 837

(9) When a Sub-Judge had failed to exercise jurisdiction vested in him by returning a plaint and the District Judge confirmed the decision the order was set aside by the High Court on revision—I L R 32 Cal 146—40 Bom 86

(10) Where rent appeal was dismissed on the ground that the Munsif had final jurisdiction and no appeal lay, the order dismissing the appeal was set aside in revision—2 C L J 69n

(11) Decree based on award from which no appeal lies cannot be interfered with in revision—I L R 29 Cal 167 P C.—6 C W N 226 P C

(12) Decree passed by a Court having jurisdiction to try the suit if based on erroneous view of law can not be set aside in revision—I L R 3 Cal 243 followed in 1 C W N 617

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Files C (yellow) contains —

Papers which are kept in file A in class I

File D (green cover) contains all other papers

Class IV Cases (execution of decrees) contain one file marked E In title execution cases where possession to immoveable property is delivered or where questions about construction of decree arises the file is divided into files A and C In such cases A file contains (1) order sheet, (2) application for execution, (3) petition of objection, (4) judgment (5) copy of judgment of appellate Court, if any, (6) Nazir's return of delivery or possession

File E contains all other papers

N B—Files of appellate Courts do not contain *D* file

Inspection of disposed of Records

Pleaders may inspect disposed of records by making stamped applications in the prescribed form If they do not want to inspect the record but require some information the required information is supplied by the Court on proper application

N B—Forms for application can be had from the Nazir on payment of price

CHAPTER V. COPIES

Who can get copies ?

A plaintiff, or a defendant who has appeared is entitled, at any stage of the¹suit before or after decree to obtain copies of the record of the suit including exhibits A stranger has no right to get copies of private documents but may get copies of plaints.

written statements, affidavits, and petitions after disposal of the case

Application.

Application for copies should be stamped and presented before the proper officer. It shall contain the names of the parties, number and year of the case, date of disposal, name of the Court and shall clearly mention the papers of which copies are required. Within 2 or 3 days of the application the applicant will find on the board the number of folios and the amount of court-fees he is required to deposit. This order should be promptly complied with, otherwise, the application for copy will be rejected. After necessary folios and court-fees are supplied the copy will be prepared and delivered within 5 to 7 days. Unused folios, if any, will be returned to the applicant.

Ordinary Charges for Copies

I "In Civil Courts, a uniform charge is made for the preparation of manuscript copies, whether certified or uncertified, at the rate of 3 as per folio " The folio to consist of 150 words English or of 300 words Vernacular, four figures counting as one word "

II 'This charge is to be levied by means of an impressed stamp of three annas on each sheet of paper corresponding with the folio to be provided with the application for a copy. Each of these sheets shall contain 150 words English or 300 words Vernacular. As there are 25 lines in each sheet no line shall contain more than 6 words English or 12 words Vernacular.

In the case of type-written copies certified or uncertified, the following charges are made, viz —

(1) The impressed stamped paper of 3 annas, referred to in the preceding paragraph, for copies of documents containing 150 type written words or less

(2) The same impressed stamped paper of 3 annas with an adhesive stamp of 3 annas affixed thereto, for copies of documents containing from 151 to 300 type-written words and

(3) The same impressed stamped paper of 3 annas with an adhesive stamp of 3 annas affixed thereto, for copies of documents containing from 301 to 450 type written words These sheets should be used for copies of lengthy documents For the concluding portion of such documents the stamped paper (1), (2), or (3) should be used, according to the number of words remaining to be typed

(4) These charges it will be seen, correspond exactly with the charges of manuscript copies viz, 3 annas for a folio of 150 English words The sheets will be divided into three equal parts by blue lines each part being intended for 150 type written words In the case of the charges (2) and (3) above, the adhesive stamps will be affixed across the perforated line on the top of the sheet of the impressed stamped paper

III In the case of certified copies, the court fee charged under the Court Fees Act should be levied by affixing the necessary stamp to the first folio of the copy

IV. Uncertified copies may be converted into certified copies, after comparison with the originals upon the application of the person to whom they have been granted, and upon his filing with such application the necessary court-fee stamps required by law

V When an applicant requires his copies to be furnished on the day of application, a *extra fee* of one rupee (or if the copies exceed four folios, of 4 annas for each folio) shall be charged on all copies so furnished to be levied from him by a court-fee stamp which should be affixed to the application for the copy and be entered in the Register for court fee stamps. Care however is to be taken that other applications for copies do not materially suffer by the arrangement. If the granting of other copies be much delayed by this rule an extra hand ought to be told off to furnish the copies.

VI In the case of maps and plans, no general rule can be laid down. In each case a charge will have to be fixed with reference to the difficulty or intricacy of the work to be done. Half is paid to the copyists and half credited to Government on account of examination fees and cost of materials."

Note—A fee of 4 annas may be charged in addition to the charges mentioned above as searching fee. The fee is levied by means of a court fee stamp to be affixed to all applications for copies.

V B The charges may slightly vary in different Provinces

PART IV.

PROCEDURES AND NOTES

UNDER

- (1) The Legal Practitioners' Act ;**
- (2) The Usurious Loans Act ;**
- (3) The Limitation Act ;**
- (4) The Provincial Small Cause Courts Act.**

N. B. The entire Small Cause Courts Act together with the Schedule II, which forms the most important bulk of the Act, has been given in Part IX with copious notes for ready use by busy practitioners.

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PART IV.

CHAPTER I

Legal Practitioners Act (XVIII of 1879) and pleader's fees etc.

It is necessary for pleaders to know when they are liable to be dealt with for misconduct under the Legal Practitioners Act

Professional misconduct

The High Court may, after such enquiry as it thinks fit, suspend or dismiss any pleader or muktear holding a certificate —

(a) who takes instruction in any case except from the party on whose behalf he is retained or some person who is the recognised agent of such party or some servant, relative or friend authorised by the party to give such instruction, or

(b) who is guilty of fraudulent or grossly improper misconduct in the discharge of his professional duty, or

(c) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other Pleader or Muktear; or

(d) who directly or indirectly procures or attempts to procure the employment of himself as such pleader or muktear through or by the intervention of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given, or

PART IV.

CHAPTER I

Legal Practitioners Act (XVIII of 1879) and pleader's fees etc.

It is necessary for pleaders to know when they are liable to be dealt with for misconduct under the Legal Practitioners Act

Professional misconduct

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(c) who accepts any employment in any legal business through a person who has been proclaimed as a tout for any other reasonable cause [See section 3]

What amounts to misconduct

- (1) Appropriating client's money—see I L R 31 Cal 44 41 I C 135
- (2) Using offensive language as a Pleader or Muktear and not as a suitor—see 5 C W N 48
- (3) Acceptance by advocate of half of his fees—I L R 35 Cal 317 F B
- (4) Misconduct other than professional—6 C W N 556 F B
- (5) Conviction for a grave offence—I L R 22 All 49 [Sec 12]
- (6) Offering money to witness—5 C W N 45
- (7) A pleader accepting brief of both sides even innocently is liable to be suspended 37 C L J 48
- (8) Taking *Satyagraha* 44 Bom 818
- (9) Entering into champertous agreement with his client 4 C L J 262
- (10) Participating in the giving of bribe 21 C W N 516
- (11) Acceptance of *Vakalatnama* from a person not duly authorised by client 43 I C 819
- (12) Filing a document which is apparently forged 20 C W N 1016
- (13) Taking instructions from a man not authorised by client to do so—20 C W N 1016
- (14) Carrying on a money lending or other business without High Court's permission 42 All 125 F B, 9 M L T 55, 8 I C 677 F B 21 M L J 559

(15) Addressing insulting letter to Court 42
All 86 F B

Note —A legal practitioner when he is a witness in the case should not act as pleader in that case
18 C W N 185

(16) A pleader acting under instructions from another pleader's clerk who had no instruction from the client is guilty of professional misconduct 36 Ind Case 442

(17) When a pleader leaves court in the midst of a case to attend another case in another court—he is guilty of misconduct—20 I C 139

(18) Putting in a name in the Vakalatnama already filed is also misconduct 17 C W N 328

(19) Withdrawal of money from court but non payment of the same to client who is forced to bring a suit against the pleader for recovery of the sum is professional misconduct 31 Cal 44 7 C W N 373

(20) A pleader purchasing an actionable claim may be guilty of misconduct 23 M L J 447

(21) If a pleader fails to appear when called upon he may be guilty of professional misconduct 16 C W N 1081 P C 35 Mad 543 P C See 35 C L J 356 If a pleader does something not as a pleader in the case but as a party he is not guilty of professional misconduct 5 C W N 48 19 C L J 110 but the word any other reasonable cause in clause (f) of sec 13 has been held to be too wide 29 Cal 890 F B This case overruled in the case reported in 5 C W N It has been held by the Patna High Court that a Court is competent to investigate into a pleader's conduct which amount to moral turpitude—7 Pat L J 601

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(22) If any pleader has any grievance against any Judge of any Subdivisional Court, he should make a representation to the District Judge or to the High Court (26 C W N. 580), he cannot boycott the Court as every pleader is bound to co-operate with Court in the administration of justice Making unauthorised statement without instruction has been held to be unprofessional 25 W. R. Cr 366 A muktear who advised his client to be absent when case would be called out was held to be guilty of misconduct 56 P R 1902 A pleader attacking a Judge in public press may be guilty of misconduct 44 I C 388

(23) A pleader making defamatory allegations without any malice while conducting a case may not be liable for misconduct 2 N W. P. 473

Procedure when charge of misconduct is brought in Subordinate Courts

Proceedings under L P Act cannot be transferred from the Court where it is started 37 I C 484 Read 10 C. W. N 1059 1 P L J. 576 at p 578

If any pleader or muktear practising in any subordinate Court or in any revenue office is charged in such Court or office with taking instruction except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that on a day to be therein appointed such charge will be taken into consideration

Such copy and notice shall be served upon the pleader or muktear at least 15 days before the day so appointed

On such day, or on any subsequent day on which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge or by the pleader or muktear and shall proceed to adjudicate the charge

If such officer finds the charge established and considers that the pleader or muktear should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof (vide 15 C W N 764) and refer the matter to the High Court and the High Court may acquit, suspend or dismiss the pleader or muktear

Any District Judge or with his sanction any Judge subordinate to him, any Judge of a Small Cause Court of a Presidency town, any District Magistrate or with his sanction any Magistrate subordinate to him and any Revenue Authority not inferior to a Collector or with Collector's sanction any Revenue Officer subordinate to him pending the investigation and the orders of the High Court, may suspend from practice any pleader or muktear charged before him or it under this section

Every report made to the High Court shall—

(a) When made by any civil Judge subordinate to the District Judge, be made through such Judge

(b) When made by a [Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge

(c) When made by a Magistrate of the District, be made through the Sessions Judge

(d) When made by any Revenue Officer subordinate to the chief controlling Revenue Authority be made through such Revenue Authorities a

chief controlling Revenue Authority may from time to time direct

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue Authority through whom or which it is made

A pleader against whom proceedings are drawn up should not be examined on oath 6 Mad 252

Note —Proceedings under this Act can also be drawn up against a legal practitioner for his misconduct prior to enrolment—Vide L R 28 Cal 890 F B Ordinarily a District Judge should not suspend a pleader without taking previous sanction of the High Court He cannot refuse to renew the certificate of a pleader because he has formed an unfavourable opinion about his character 13 C W N 415

Action against a Legal practitioner can be taken under section 14 only after notice calling upon him to show cause 19 M L J 504 Conviction for giving false evidence is sufficient ground for removing a pleader from practice—46 Mad 903

In a proceeding under sec 12 which can be taken only by the High Court (vide 11 C L J 164) for conviction in a criminal case the legal practitioner can not be allowed to say that he is innocent He can not go behind the conviction 14 C W N 1073 Where the acts of a pleader constitute grave criminal offence he ought to be prosecuted in the criminal court and it is ordinarily not proper to take action against him under the L P Act (24 C W N 755=47 Cal 1115) but where a mukhtear had attested a will after death of the testator—the mukhtear was dealt with under the L P Act—14 C L J 606 So it appears that even in case of grave criminal offence—action under the L P Act was approved in some cases

Proceedings under sec 13 taken by a Subordinate Court can be adopted by High Court which Court alone is competent to take action under sec 13 vide 21 C W N 516

Proceedings under the L P Act are judicial 6 Mad 252 So witnesses adduced can be cross examined 9 Bom L R 866 The pleader proceeded against becomes an accused—so no oath can be administered to him 6 Mad 252 Where the evidence is not such as would justify a conviction if a criminal case were started the proceedings under the L P Act will fail

The District Judge may express his difference of opinion from that of the Subordinate Court while forwarding a reference but this does not vitiate the proceeding in any way as the High Court is to form its own opinion on the evidence on the record and pass such orders as it thinks fit 49 Cal 732 26 C W N 589 The District Judge is bound to forward the opinion of the Subordinate Court with the reference for consideration by the High Court, 9 I C 247 Where a proceeding is taken for declaring a person as a tout—the accused 'must be heard in defence 45 All 676

As to how touts are declared—see sec 36 L P Act and read 11 C L J 513 and 40 All 153

Summary of Rules as to appointment and authority of pleaders framed by the Calcutta High Court

The appointment of a pleader under the Civil Procedure Code to make or to do any appearance application or act for any person shall be in writ and shall be signed by such person or his agent by some other person duly authorised by po

SCALES OF FEES.

Nature of case	Fees of Class I	Fees of Class II	Fees of Class III	Fees of Class IV	Fees of Class V
(A) <i>Contested suit or appeal</i>	5 per cent	up to Rs 5000 as in Class I and 2 P C on the balance	up to Rs 20,000 as in class II and 1 P C on the balance	up to Rs 50 000 as in class III and on the balance $\frac{1}{2}$ P C	(Rs 1000)
(B) <i>Ex parte suit or Judgment on confession or in cases dismissed for default</i>	2½ per cent	Half of fees of (A)	Half of fees of (A)	Half of fees of (A)	(Rs 500)
(C) <i>Suits or appeals withdrawn or compromised</i>	1½ per cent	up to Rs 5000 as in class I and on the balance $\frac{1}{2}$ P C	up to Rs 20 000 as in class II and on the balance $\frac{1}{2}$ P C	up to Rs 50 000 as in class III and on the balance $\frac{1}{2}$ P C	(Rs 250)

(D) *Miscellaneous cases—decided on contest*

a fee up to Rs 20 in the High Court and
a fee up to Rs 10 in Subdivisional Courts

**Pleaders' Fees.
Scale in Bengal.**

The following rates of fees have been prescribed by the Calcutta High Court and the unsuccessful party will be required to pay the same to his adversary's pleaders (H C C O. Chap VI)

**Contested Scale.
Where suit is decreed.**

(1)

Suits for specific property etc :—

In suit for the recovery of specific property or a share of specific property whether immoveable or *moveable* or for the breach of any contract or for damages —

(a) If the amount or value of the property, debt or damages decreed does not exceed Rs 5,000—at 5 per cent on the amount decreed

(b) If the amount or value exceed Rs 5,000 but does not exceed Rs 20 000,—on Rs 5 000 at 5 per cent and on the remainder at 2 per cent

(c) If the amount or value shall exceed Rs 20,000 but does not exceed Rs 50 000—on Rs 20,000 as above and on the remainder at 1 per cent

(d) If the amount or value shall exceed Rs 50 000—on Rs 50,000 as above and on the remainder at $\frac{1}{2}$ per cent

Provided that in no case shall the amount of any fee exceed Rs 3000

(2)

**Partition, pre-emption, damage suits ; suits
for assault, defamation, suits for right of
easement ; Land Acquisition cases**

(a) In these suits pecuniary value of plaintiff's claim cannot be exactly defined. In such cases Court

may order the fee of the plaintiff's pleader to be calculated with reference either to the amount decreed or according to the valuation of the suit : fees to be calculated as in para I

(b) *In Land Acquisition cases* before the Special Judge, fees may be calculated on the amount of compensation decreed in excess of the sum tendered by the Collector

(c) If the reference be disallowed in Land Acquisition cases, pleader's fee may be awarded to Government on the difference between the sum awarded and the sum claimed

(d) If the Judge thinks fit he may allow fees as prescribed in miscellaneous cases

(3)

Where suit is dismissed.

(a) Where suit is dismissed, defendant will get pleader's fees which would have been allowed to plaintiff had he succeeded. If defendant gets decree and plaintiff's suit is dismissed, defendant will get pleader's fee on the amount decreed in addition

Where suit is dismissed for default

(b) Half of the pleader's fees on the claim is allowed to defendant's pleader

(4)

Where suit is partly decreed and partly dismissed. Pleader's fees are calculated in proportion to each party's success.

(5)

Where suit for unliquidated damages is partly decreed and partly dismissed Plaintiff gets fees on the amount decreed and defendant may not get

any fee in proportion to his success except in special cases.

(6)

Where there is joint defence of several defendants and they succeed Where there is common interest, only one set of pleader's fees is allowed and the Court may apportion the same among the defendants.

(7)

Where several defendants contest on different grounds and they succeed Separate sets of fees may be allowed with reference to the value of such separate interests

N B These are ordinary rules but the Court has right to exercise its discretion in special cases.

(8)

Miscellaneous cases A fees not exceeding Rs. 80 in the Court of a Judge or a Subordinate Judge

(b) A fee not exceeding Rs 16 in the Court of a Munsiff in suits of amount or value exceeding Rs 300

(9)

Miscellaneous appeals As in para 8, clause (a).

(10)

Ex parte suits Half of the amount ordinarily allowed in contested case.

(11)

Review. (a) Where rejected, half of the fee, allowed in the original case may be allowed

(b) If review is granted and judgment is reversed —half of the fee allowed in the original case.

A pleader guardian shall not take frivolous defence
—for duty of such guardian Read 52 I. O 346

**Fees allowed to pleaders in Bengal when working
as Commissioners for Local investigation and
for partition ; for taking accounts and
for examining witnesses.**

Scales of Fees.

Pleader Commissioners get fees at the rate of Rs 4 per witness in Munsiffs' Court and Rs 10 per witness in Courts of District Judges, Sub-Judges and Small Cause Court Judges (Vide H C C O, Ch. VI, Rule 19) for examination of a witness. Fees at the above rates *per diem* are allowed to pleaders who are appointed Commissioners for examination of accounts

In cases of local investigation and partition, Commissioners appointed ordinarily get fees at the following rates

	Munsiff Courts	Other Courts
Survey passed pleader	Rs 8 per diem	Rs 16 per diem
Executive Engineers } Assistant Engineers }	Rs 30 per day in all Courts	
Sub Engineer	Rs 10 to Rs 15 per day in all Courts	
Overseers (Graduate)	Rs 5	.
, Apprentice	Rs 2 to Rs 4	, "
, Amin	Rs 4	Rs 4

**Fees allowed to pleaders under the Rangoon
High Courts when appointed to work
as Survey Commissioners for
Local Investigation.**

This has been left to the discretion of Courts and no scale has been fixed (Vide Rule 30 of the Rangoon High Court)

**Fees allowed in Rangoon to pleader Commissioners;
for partition work, taking accounts and
examining witnesses.**

Commissioners' fee for any effective meeting shall not exceed three gold mohurs for the first two hours and one gold mohur for each succeeding hour

CHAPTER II.

The Usurious Loans Act Act No. X of 1918.

**An act to give additional powers to Courts to deal
in certain cases with usurious loans of
money or in kind**

Whereas it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind, It is hereby enacted as follows :—

Short title and extent	1 (1) This act may be called the Usurious Loans Act, 1918
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(2) It extends to the whole of British India, including British Beluchistan

(3) The Local Government may, by notification in the Local Official Gazette, direct that it shall not apply to any area class of persons or class of transactions which it may specify in its notification.

2. In this Act unless there is anything repugnant in the subject or context,—

Definition

(1) "Interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise

(2) "Loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the Court, in substance a loan

(3) "Suit to which this Act applies" means any suit—

(a) for the recovery of a loan made after the commencement of this Act, or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act.

3 (1) Notwithstanding anything in the Usury Laws Repeal Act, 1855, where, in any
 Reopening of transactions of suit to which this Act applies whether heard *ex-parte* or otherwise, the Court has reason to believe,—

(a) that the interest is excessive, and

(b) that the transaction was, as between the parties thereto, substantially unfair,

the Court may exercise all or any of the following powers, namely, may,—

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest,

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof,

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just

Provided that in the exercise of these powers, the Court shall not—

(i) re open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any person from whom they may claim at a date more than six years from the date of the transaction,

(ii) do anything which affects any decree of a Court

Explanation—In the case of a suit brought on a series of transactions the expression the transaction means for the purpose of proviso (i), the first of such transactions

(2) (a) In this section “excessive” means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan

(b) In considering whether interest is excessive under this section, the Court shall take into account any amount charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia renewals, or any other charges, and if compound interest is charged, the periods at which it is calculated and the total advantage which may reasonably be taken to have been expected from the transaction

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known or must be taken to have been known, to the creditor

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known to the creditor

Explanation—Interest may of itself be sufficient evidence that a transaction was substantially unfair

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide* and that he

had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section

For the purpose of this subsection the word 'notice shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act 1882

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court

4 On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings the Court may exercise the like powers as may be exercised under sec 3 by a court in a suit to which this Act applies

Rulings and notes

After the passing of the U L Act the Courts have wider discretion in reducing interest whenever the^e interest charged appears to be excessive Formerly in the absence of undue influence exercised on a debtor the Courts had to allow contracted rate of interest 48 Cal 93, 59 I C 277 The Court might however interfere where the stipulation as to compound interest appeared to be penal but it was held that the stipulation to pay compound interest was in itself not penal 41 M L J 470 In a recent Privy Council case it was held that interest on a mortgage bond could not be reduced even though exorbitant unless there was undue influence or coercion 24 C W N 233 P C But after the passing of the U L Act the Court can reduce interest on all transactions entered into after 22-3-1918 in fit case and can presume the transaction to be unf

from the high rate of interest charged The Court can now reduce interest even in *ex-parte* cases 44 Bom 775 and even where the defendant confesses judgment 77 I C 382

Absence of Contract as to interest.

Some interest should be allowed for detention of money even in absence of contract between the parties as to interest 22 C W N 488, 42 Mad 661 In a Privy Council case reported in 22 C W N 866 it was held that interest may be allowed on contract or under the general law authorising the Court to allow it In another case it had been held by the Calcutta High Court that interest could not be allowed by way of damages in case of an ordinary debt Vide 31 C L J 348 but a contrary view had been taken by the same High Court in another case 22 C W N 488 In a mortgage bond—there was no stipulation for payment of interest but the Calcutta High Court allowed interest at the rate of 6 P C P A vide 24 Cal 699 F B See also 46 Cal 488 When a sum due is not a debt nor is it an ascertained amount interest can not be allowed under the Interest Act (Act XXIII of 1839) 32 C L J 239, 41 All 254 But in a Patna case interest was allowed on *mesne profits* vide 1 P L J 235

Interest was refused on the sum allowed as damages for breach of contract 21 I C 543 But in the case of a *Hundi* interest was allowed at 6 P. C. P A (even in the absence of a contract) under the Negotiable Instruments Act 1 P L J 71

CHAPTER III.

Summary of the Indian Limitation Act— (Act IX of 1908) with notes

FOR

Easy reference by busy Practitioners

Limitation of suits, appeals and applications sec. 3.

It is duty of every Court to go into question of limitation whether the parties urge it or not (1) It is not necessary to take the plea of limitation at the inception of the suit or preceeding, it may be pleaded at any time (2) Such plea can be taken for the first time before an appellate court (3) The plea of limitation may be given effect to even in second appeal although it might not have been raised in the Courts below, provided the materials before the second appellate Court permit a determination of that question without further evidence (4)

Amendment of plaint and deficit Court fee :—

For purposes of limitation, a suit is started as soon as a plaint is presented, it does not matter if the plaint is insufficiently stamped at the outset but deficiency of stamp is made good after the period of limitation but within the time allowed by the Court (5). In case the plaint has to be amended, limitation is ordinarily saved if it was presented originally in time (6)

Section 4

If a Court is closed on a Gazetted holiday, this section will apply and a party filing suit on the day following will be in time if he would have been

(1) 44 I C 570 (2) 40 I C 661 (3) 15 All 123, 9 Cal, 655, 8 Bom 535, 5 C W N 160 (4) 28 I C 378 (5) 19 Bom 320, 2 All 832, 23 W R 447 (6) 29 All 149 4 C W N 318 32 Mad 305

otherwise so (7) If the Court be closed on the last day of the period of limitation the judgment-debtor may make a deposit into Court under sec 174 B T Act, on the first day the Court re opens notwithstanding the absence of express provisions to that effect (8)

Where time fixed by law or Court is not sufficient—It may come within the savings of this section in a fit case if the requirements are complied with at the earliest opportunity (9)

Section 5

High Court cannot extend time under this section to judgment debtor for depositing decretal sum for setting aside a sale under Or 21 r 92 (1) What is sufficient cause?—circumstances which may appear to be reasonable (2)

Caution needed for use of discretion—the grounds must be very satisfactory (3)

This section should be liberally construed to allow substantial justice to be done where no negligence or *mala fides* are apparent (4) A *bona fide* mistake of a lawyer in computing the period of limitation is sufficient for exercise of power under this section (5)

Section 6

The object of this section is not to place a minor under any special disability but to make some special concession in his favour (6) It is an enabling section and should be construed liberally (7) *Suit*

(7) 20 Mad 469 (8) 18 Cal 231 (9) 10 C W N 530 (1) 15 C W N 635 10 I C 148 (2) 25 Mad 166 (3) 30 Bom 166 (4) 17 C, W N 107 (5) 19 I C 931 (9) 5 C W. R 204 (7) 41 Bom 625

must be brought within three years from the time when disqualification ceases No other cause of disqualification will be recognised except those specifically mentioned in the Act (1)

When one of the joint decree holders is a minor will section 6 apply?—Yes (2)

Does sec 6 apply to the B T Act?—No (3)
Limitation once it starts would not be stopped by subsequent disability (4)

Section 7

Sec 7 contemplates the existence in two or more persons of a joint right and a joint cause or causes of action in a single suit (5)

A B—This section applies only when one of the several joint suitors may not give a discharge of the liability on behalf of himself and others For members of a Hindu joint family see *Hanhan v Bholi Pershon* 6 C L J 383

Sec 8

Nothing in sec 6 or 7 applies to suits to enforce rights of pre-emption or shall be deemed to extend for more than three years from the cessation of the disability or death of the person affected thereby the period within which any suit must be instituted or application made

A person once suffering from any disability must if he so chooses bring the suit within three years from the time when his disability ceases (6)

(1) 19 C W N 1193 (2) 28 Cal 565 25 Mad 431 22 All 199 20 Bom 383 (3) 29 Cal 813 (4) 29 Bom 68 20 Cal 714 25 Mad 431 (5) 40 I C 664 (6) 5 C W N 545 24 Mad 387

Section 9

Where once time has begun to run, no subsequent inability or disability to sue stops it provided that, when letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues

If time has once begun to run against a person subsequent disability of persons succeeding him will not affect the question of limitation (1)

Section 10.

The effect of sec 10 is that time is bar to an action against (a) the trustee himself (b) his representatives and (c) his assign (except assign for valuable consideration) But, as would appear from Art 134, if one chooses to bring a suit against the assign for valuable consideration, he must come within the statutory period of 12 years (2) Sec 10 has reference to express trustees (3) A mortgagee in possession after the mortgage debt has been discharged (4) or a *Benamdar*, is not a trustee within the purview of this section (5) Where there is an obligation imposed upon a person to use a property partly for charitable purpose and partly for the benefit of others, and not for his own personal advantage, there is a trust created in his favour and he is a trustee (6)

Assign for valuable consideration and his position:—A purchaser of a trust property in a Court sale is an assign for valuable consideration, although he knows the properties to be trust properties and the interest therein to be a of limited nature

(1) 42 I C 809 (2) 10 C W N 738 (3) 4 All 187 (4) 9 W R 187 (5) 11 W R 72 (6) 21 W R 315

Computation of the period of limitation and exclusion of certain periods from the time allowed by law

Sec. 12—Lays down the exclusion of the following periods —

(a) In a suit, appeal or application the day from which the periods of limitation has to be counted

(b) In case of appeal, application for leave to appeal, an application for *review* of judgment—(i) the day on which the Judgment decree or sentence is pronounced,

(ii) the time taken for getting copies etc of the Judgment appealed against

(iii) Where a decree is appealed from, or sought to be reviewed, the time taken in obtaining copy thereof

(iv) In case of an application to set aside an award—the time taken for obtaining copy thereof

This section lays down a general rule of computation of the period of limitation, namely, that the day from which the period is to be calculated *shall* be excluded. Thus, for example, in case of a suit on a note of a hand payable on demand, the date of execution of the note has to be excluded (1). Similarly if in a bond a day is specified for repayment of the debt, that date is excluded in computing the period of limitation (2). In a suit for enforcement of a contract the date on which the contract is made is to be excluded, in computing the time allowed for its performance (3).

Rule regarding copies—The actual time taken for obtaining the copies is the period that this section

contemplates Law requires that the application should be made at the proper time to the officer concerned with the requisite fee and folios and that it should be taken delivery of at the earliest opportunity at the appointed place. If there has been laches on the part of the applicant in complying with the aforesaid rule he cannot get any extension on that ground.

Simultaneous and Separate applications for copies of Judgment and decree—how to compute the period of deduction?—If application for judgment and decree be made at the same time the period taken for obtaining them both has to be deducted. But if the copy of the decree be applied for after the copy of the judgment has been obtained the aggregate period for getting them both will be deducted (1)

Application for copies when to be made—A party in order to get the benefit of this section must apply for copies before the period of limitation for filing the appeal is over (2)

Sec 14

This section allows the exclusion of time in a proceeding conducted *bonafide* in a Court without jurisdiction.

The Limitation Act is not applicable to proceedings under the Provincial Insolvency Act (3). This section applies to suits and not to appeals (4).

Sec 15

This section prescribes the exclusion of any period during which a suit or proceeding might have been stayed by a court.

(1) 33 Mad 256 (2) 20 I C 537 15 Bom L R 681 (3) 27 I C 144
(4) 23 Cal. 253 See also 29 All 638 and 19 C W N 473

An order granting time to the judgment-debtor for payment of the decretal amount is not an order for stay of execution of the decree within the meaning of this section (1) An order of the appellate Court staying execution, or appointing of a receiver comes within the purview of this section and the time therefore should be excluded (2) The time during which execution is stayed by an injunction order should also be excluded (3)

Sec 18

Effect of fraud on the question of limitation
What is fraud ? (*Read Section 18*) It implies active deceit in defrauding a person of his rights It means a deliberate and intentional concealment of facts by which ignorance of the plaintiff was brought about (4) Plaintiff must be in the dark about the right if he is aware of his right, inspite of the fact that fraud was practised upon him, he cannot get benefit of this section (5)

What must the plaintiff prove in order to have the benefit of this section ? There must be specific allegation of fraud which should be established clearly (6)

When onus of proof shifts on to the defendant ?

When the plaintiff succeeds in establishing that he has been kept in the dark about his title by fraud it is for the defendant to shew that the plaintiff had knowledge of it It would not do for him to shew that the plaintiff had inklings and shadowy materials which if vigorously followed up would have led to the discovery of the fraud complained of (7)

(1) 41 I C 24 (2) 66 I C 97 (3) 62 I C 255 38 Bom 153
 40 M L J 124 (4) 16 I C 547 (a) 24 I C 249 (6) 1921 Pat 181
 15 Cal 533 P C 17 C W N 594 (7) 49 Cal 886 5 P L J 200
 49 Cal 886 17 Bom 341 P C

Time begins to run from the date when the knowledge of the fraud comes to the suitor *See also the Chapter on Fraud at page 452*

Sec. 19.

Acknowledgment in writing—its effect :—

Acknowledgment gives a fresh start to the period of limitation Such acknowledgment, however, must be made *before* the period of limitation (1)

Who may acknowledge ?—It need not be by the debtor it may be by his duly authorised agent A receiver of an insolvent's estate may acknowledge (2) Acknowledgment by a guardian appointed under the Guardians and Wards Act binds the minor (3) Acknowledgment by the manager of a joint Hindu family binds the other members (4)

What is acknowledgment ? Admission of the debt must be unqualified (5), whether a particular endorsement does or does not constitute acknowledgment depends upon its terms (6). A deposition given and signed by a party is an acknowledgment (7). Statement of debts in an insolvency petition amounts to an acknowledgment (8)

An illiterate person might acknowledge through an other person who writes for him if he puts his mark (9)

(1) 26 C W N 636, 26 Bom. 782 *contra* 72 I. C 692

(2) 38 I O 169, 17 Bom 512

(3) 26 Bom 221, 26 All 598, 27 Mad 243

(4) 37 Cal 461, 17 Bom 512, 5 Mad 169 F B

(5) 30 Cal 699 (6) 33 C L J 433

(7) 35 All 437, 20 Mad 289

(8) 35 Bom 383

(9) 23 C W. N 930 7 Mad 76 28 Bom 262

Sec. 20 *

Effect of payment of interest or principal

There is no special mode or form of payment (1)
 Receipts of rent and produce in lieu of interest saves limitation (2) By 'interest' is meant part or whole of interest (3)

Who may pay? Payment by a *karta* of a joint family cannot extend the period in case of a mortgage debt (4) Principal debtor's payment does not extend time against his surety (5)

Endorsement of payment alone may save limitation although there has really been no payment made (6)

When there is no order of interest in a decree, payment of interest without endorsement by the Judgment-debtor cannot save limitation

CHAPTER IV.**Procedure under****The Provincial Small Cause Courts Act.**

The entire Act with notes has been given in Part IX for facility of reference All suits except these mentioned in the Sch II of the Act are triable by the S C Court So Sch II which forms bulk of the Act requires careful study in the light of rulings cited In S C C cases summonses are issued for final

(1) 25 Cal 844 2 C W N 402 P C

(2) 72 I C 492 35 C L J 58

(3) 35 All 878

(4) 25 Mad 220 F B 18 C W N CCXII notes

(5) 44 Cal 978 28 Bom 248

(6) 16 I C 754 23 I C 15

*See the amendment by Act I of 1917 The amendment has been given in Part V Chapter I under heading K (1)

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disposal and the Judge records simply memorandum of evidence and decides the suit Muffasil courts have been invested with S C C jurisdiction up to pecuniary limits fixed by the Local Governments

The following procedures are *special* to the S C C Act

- (1) Setting aside of *Ex parte* decree
- (2) Review
- (3) Return of plaint
- (4) Attachment of immoveable property

(1) Application for setting aside an *ex parte* decree must be made within 30 days from the date of the decree accompanied by the deposit of the decretal amount or with security (See Note to sec 17 of the Act in Part IX)

(2) The same rule applies to applications for review of judgment (Vide Sec 17 of the Act)

At any rate the deposit must be made or security furnished within 30 days in case of application for setting aside *ex parte* decree and within 15 days in case of an application for review of judgment

It was recently held in a recent Calcutta case that when an application for review of judgment in an S C C case was made on the last date and the Court allowed time to deposit decretal amount it was held by Sanderson C J and Walmsley J that the court had no jurisdiction to extend the time under sec 148 C P C (1) It cannot be said that the opposite party had waived the objection in a case like this

Deposit.

The entire amount must be deposited, and if the deposit be short even by a small amount, it cannot be accepted 33 I. C 133 When security is furnished within time, but if it is found to be insufficient later on, the application will fail 62 I C 108 It may be noted here that in the opinion of the Madras High Court, deposit may be made at any time before the hearing of the application 13 Mad 178 F B

Application and Review (Limitation.)

Application for review of judgment must be made under Art 161 of the Limitation Act, i.e. within 15 days from the date of the decree or order But when an application is made for setting aside an *ex parte* decree the application may be made within 30 days from the date of the decree or within thirty days from the date when the applicant comes to know of the decree

Return of plaint.

Where an intricate question of title is involved the Court should return the plaint under section 23 (1) If, however the Court tries the suit, the Court's finding as to title will not operate as *res judicata* in a subsequent title suit The suit, however, should be framed claiming relief for money and the Court will consider the question of title only incidentally The Court will, in such a case, look into the nature and character of the case (2)

How plaint should be returned

If the Court trying the suit has both S C C and original jurisdiction, and the Court is of opinion that

the suit ought to be tried in the ordinary way, the plaintiff should be made over to the party for refile. But where the Munsiff simply passed an order transferring the case to the ordinary file, the High Court did not interfere 23 Cal. 884, 57 I C 951

Exclusion of time in case of return of plaint.

Where the plaint is returned under Sec 23, the plaintiff is entitled to get the time during which the suit was pending in the S C Court excluded while computing the period of limitation

Can a District Judge direct a subordinate Court to try a S C C suit in the ordinary file?—No The Judge has no jurisdiction to do so

Attachment of immoveable property before Judgment in a S. C C suit

Before the passing of the Act I of 1926, the Calcutta High Court held in some cases that a Small Cause Court could attach unmoveable property before judgment, but the Legislature thought that it was not the intention of the Act and so by passing Act I of 1926 it was laid down that a Provincial S C Court was not competent to attach immoveable property before judgment (Vide Sec 3 of Act 1 of 1926)

A few words about some common suits.

The details about suits excepted from the cognisance of S C. Court will be found in Part IX but here few words are said about some common suits regarding which controversies often arise at the time of the trial

Account suit.

A suit for accounts cannot be tried by an S C Court For plaint of an account suit and hints, see

plaint No 18 in Appendix to Part I. page 152. Every suit where account has to be taken into consideration for coming to a decision is not excepted : e where a suit is for recovery of a specific sum alleged to be due on a settlement of accounts the suit will be triable in a S C Court though the Court may have to appoint a commissioner for examination of accounts with a view to ascertain the truth of the Plaintiff's claim But a case where there is prayer for calling upon the defendant to render accounts of sums alleged to be due to the plaintiff—is exempted from the cognizance of a S C Court—23 Cal 884, 57 I C 951 See Art 30 in Sch II of S C C Act in Part IX

Contribution suit.

It is a common notion that contribution suits are not triable by a Small Causes Court But where a plaintiff paid the entire amount in suit for the benefit of the defendant and seeks to recover the same—the suit, though commonly called, a 'contribution suit' is really one for recovery of money Such a suit is therefore triable by a S C Court But where a suit for contribution by a co-sharer in joint property is brought in respect of payment made of money due from another co sharer, the suit is exempted from the jurisdiction of a S C Court (Vide Art 41 of Schedule 2 of the S C. Court Act

Where a plaintiff satisfies decree payable by another and sues for recovery of that amount—the suit will be triable by S C Court—15 Cal 713

Ordinarily suits for contribution will be triable in an S C Court , but where the suit is by a co sharer

and falls strictly under Art 41, the suit will be exempted—40 All 135

Where a plaintiff alone was liable under the decree and satisfied it and then sues the defendant for reimbursement, the suit may be tried in the S C Court. But where a decree was passed against the defendant for rent which was payable by him and his co sharers and the J D deposited the decretal amount to avoid the sale and then sued his other co sharers for reimbursement, held that the suit was not triable by S C Court (4) 16 C W. N 975 Contribution implies payment by each of the parties interested of his share in any Common liability, vide judgment of Mukherjee and Beachcroft J J in *Satyabhusan vs Krishnakali* (1) Consequently an action for contribution is a suit brought by one of such parties who has discharged the liability common to them all to compel the others to make good their shares (2) So it appears that mutuality is the test of liability to contribute. Where a plaintiff has ceased to be a co sharer by selling his share and then brings a suit against his old co sharers in respect of sum paid by him as rent of joint property still the suit will be exempted under Art 41 (3)

Cases involving criminal offence punishable under Chapter XVII of the Indian Penal Code

Such cases have been exempted by the amendment of the S C C Act in 1914 (See notes to clause 35 (v) of Sch II of the S C C Act) So a suit for damages for trees taken from the plaintiff's land by a trespasser (the offence being one of theft) is not

(1) 18 C W N 1303 (2) 16 C. L. J 148 at 151 and 156

(3) 16 C W N 975

triable by an S C Court A suit in respect of property or money or money criminally misappropriated cannot be tried by a S C Court but where the defendant admitted liability and undertook to compensate the plaintiff the suit may be tried by an S. C Court

But a suit to recover money taken by police as stolen property is triable in an S C Court, 9 C W N 485

A suit to recover money paid to a pleader for institution of a suit which was not done, does not come under this exception and is triable by an S C Court 24 All 208

A suit for recovery of ornaments or for their value in deposit with defendants is triable in an S C Court where plaintiff does not charge the defendant with any criminal liability , 56 I C. 663

The entire Provincial Small Cause Courts Act with notes has been given in Part IX Please refer to the Act for further particulars

THE CIVIL COURT PRACTICE & PROCEDURE. PART V.

Laws of every day Reference

IN

TWO CHAPTERS

CHAPTER I

Contains —

- (A) Deeds by pardanashin ladies and illiterate persons
 - (B) Attestation and execution of deeds
 - (C) Fraud
 - (D) Mistake
 - (E) Thakbast map Batwara papers etc
 - (F) Benami transactions
 - (G) Alienation by Hindu widows with or without consent of next reversions
 - (H) Possession
 - (I) Boundary dispute
 - (J) Liability of a party or a witness for defamatory statement
 - (K) Law of interest.
 - (K1) Acknowledgment—Payment of interest Recent amendment of the Limitation Act
 - (L) English Equitable principle of part performance as applied to India
 - (M) Hindu Law of Succession
-

CHAPTER II

Contains—

Important case laws on various subjects arranged in alphabetical order

PART V.

CHAPTER I

(A)

Pardanashin ladies and illiterate persons—deeds by.

In the Privy Council case of *Sreekishen v Mussamat Kashmoni* where a document was executed by the Respondent, a *pardanashin* lady, who was under the influence of her husband's brother and received no independent advice and the true nature and effect of the proceedings and documents were concealed from her and she was misled and betrayed by persons who had interest adverse to her and who was acting in their own interest it was *held* that the document was void and not binding on the lady (1) But in another case where the lady had her draft of a document drawn up by her own men under her own instructions, and then got the deed registered by her Muktear and husband by a general power of-attorney, it was *held* that even though the document was not explained to her, it was to be presumed that the lady had knowledge of the contents of the deed under the circumstances (2) When a deed written in English was explained in Bengali to the lady twice at different times and the lady got time to think over the document it was *held* that the deed had been duly executed by the lady with full knowledge of its contents (3) So it appears that in a transaction with a *paradanashin* lady the circumstances und

(1) 20 C W. N 957 P C (2) 19 C W. N 1330

(3) 22 C W N 226

execution of the deed as it was not attested according to law (1) A deed could not be considered as attested if the witnesses signed before execution by the lady even if afterwards the lady admitted execution in presence of the witnesses but this is no longer the law (2) If a lady cannot read and write—she may put her mark against her name written by some body in the deed It was held by Chapman and Chatterjee JJ in case of a will that an execution is valid in law if the person who wrote the name of the lady signed after her mark was put—as the scribe became a valid attesting witness to the deed (3) But when the scribe wrote the name of an illiterate lady executant under her directions and the executant did not put any mark—he was not considered as an attesting witness—inasmuch as a man could not attest his signature (though he might have signed for another) (4) But a scribe can be an attesting witness, if he subscribed in the document as an attesting witness and a scribe and actually saw execution and afterwards signed his name in the deed [20 C W N 699 (Patna case,)]—See discussion at page 701 column 2] For meaning of the word attestation as defined by the Privy Council—Read the case of *Shamu Pattar v Abdul Kadir* (5)] If the executant signed a blank paper, and then the deed was written on the very paper, such an act does not amount to execution of a deed as no deed was in existence at the time of the signature (6) If an attesting witness be illiterate, and does not sign personally, but some body writes his

(1) 22 C W N 697

(2) 9 C W N 457 16 C W N 1009 (Vide Act XXVII of 1926)

(3) 19 C W. N 1295

(4) 23 C W N 290

(5) 16 C W. N 1009 P C.

(6) 6 C W N 329

name under his direction—still the witness will be a valid attesting witness (1)

**Recent amendments regarding the law of
attestation**

(Act XXVII of 1926 and Act X of 1927)

The law as it formerly stood has been discussed above. But as the former law of attestation was productive of great hardship in some cases the legislature thought it desirable to bring about some change and this has been effected by the passing of Act XXVII of 1926. Under the amended Act the word 'attest' as mentioned in Sec 59 of the Transfer of Property Act includes attestation by a person who received an acknowledgment of the execution from the executant though the witness might not have actually seen the executant execute the document. There are conflicting decisions as to whether the said amending Act is retrospective in its operation. The Allahabad High Court in a Full Bench case reported in I L R 49 All F B answered the question in the negative. The same view was adopted by Panton and Mitter JJ in the case reported in 31 C W N 128 (notes). But the law on the subject seems to have been made clear by the passing of Act X of 1927, by which Act XXVII of 1926 has been given retrospective effect to. So as matters now stand an old deed executed before the passing of Act XXVII would be held to have been validly attested if the attesting witness attested the deed on the strength of the acknowledgment of the executant alone. A Sub Registrar before whom the executant admitted execution may, therefore be

taken to be a valid attesting witness, vide judgment of B B Ghosh and G N Roy, J J in *Radha Mohan Dutta v Nripendra Nath Nandi and others* (1) In *ex-parte* and uncontested cases, attestation may be proved by any witness, *e.g.* the plaintiff, who saw execution and attestation without becoming a witness to the deed

(C)

Fraud

Cases based on fraud are quite frequent, so this matter if dealt with in a book meant for junior practitioners will not be out of place

It is a well known principle of law that no Court of justice will lend its aid to further fraud. So very strict evidence would be demanded in Courts for proving alleged fraud, *i.e.*, whether a transaction is or is not what it appears to be on the face of it (2)

A collusive and fraudulent proceeding in a Court is not a judicial proceeding and is to be treated as availing nothing to the party who sets it up, as the machinery of the Court cannot be utilised for purposes of creating fictitious titles which must inevitably tend to weaken the sanctity which justly attaches to a judicial transaction. So a party who allows a fraudulent decree to be passed against him cannot take advantage of the same in a subsequent litigation (3)

The mere fact that a decree was obtained by false evidence would not be sufficient by itself to have it set aside by a suit on the ground of fraud. *The party must shew that the decree was based on fraud* (4)

(1) 31 C W N 160 notes and 27 Cal 169

(2) 4 Bom 594

(3) 22 C W N 369

(4) 23 C W N 133

Where the decree is against a minor and it appears that the minor was not properly represented by a proper guardian either through mistake or fraud in the suit the Court sets aside that decree on that ground and revives the original suit and tries it on its merits. This rule applies also where a compromise decree is set aside on the ground of fraud (1). In a suit for declaration that a certain rent decree was fraudulent, the plaintiff must prove that the decree was fraudulent and collusive. If the plaintiff fails to prove this and the evidence adduced by the plaintiff is consistent with the allegations set up on both sides the suit would fail (2). Where a party got summons but could not attend Court owing to fraudulent circumstances beyond his control, he can seek for setting aside the decree on the ground of fraud if in fact fraud was practised on him. The fraud alleged, need not in every case, be one which prevented a party from placing his case before the Court. It must be proved that the fraud of the defendant was an extrinsic and collateral act which vitiated the judgment (3). No suit lies to set aside a decree on the ground of non service of summons (4).

Fraud is ordinarily divided into (i) Actual or positive fraud, and (ii) Constructive fraud. Where a party intentionally misrepresents fact or produces a false impression he is guilty of positive fraud, and where at the inception there was no fraudulent intention and the acts and conduct did not originate in any evil design, but subsequently by their tendency had in effect deceived or misled persons in such a case

(1) 21 C W N 1087 and 2 Cal 184 P C (2) 27 C L J 137

(3) 15 C W N 1010

(4) 37 Cal. 197

the fraud is said to be a constructive one. Fraud however in no case should be assumed without good and probable ground, and it is settled law that where one kind of fraud is charged another kind of fraud upon failure of proof cannot be substituted for it (1)

Where a party alleges fraud as a ground for relief general allegations will not be sufficient, but specific instances upon which such allegations are founded must be pointed out as otherwise the opposite party may not be in a position to meet the charges subsequently attempted to be proved (2)

A stranger to a suit may prove that any judgment put in by his adversary had been obtained by fraud (Vide sec 44, Evidence Act and I L R 20 Mad 333 3 C W N 670)

If a person allows a collusive decree to be passed against him and ostensibly conveys the property for satisfaction of the decree, his heirs are subsequently estopped from challenging the decree or the sale on the ground of fraud (3). The reason is that a party cannot take advantage of his own fraud nor can his representatives do so, unless they are themselves the defrauded parties (4)

A decree obtained by fraud in one Court can be set aside on the ground of fraud by any other Court within whose jurisdiction the cause of action arises wholly or in part (5)

For cases where a sale can be set aside on the ground of fraud—see cases noted in Chapter II Part II under Order XXI Rule 90 C P C at pages 209-212 of this book

(1) I L R 6 Bom 209

(2) 18 Cal 139

(3) 18 Mad 378

(4) 3 W R 92

(5) 7 C W N 353

(D)

Mistakes

Where the party seeks to set aside a document or a transaction on the ground of mistake, he must come before the Court within a reasonable time (1). As to the circumstances under which mistakes and fraud in a contracting party will avoid a contract—see sections 20 to 22 of the *Contract Act*

In a suit on a bond, where interest was entered at Re 1 per month and the plaintiff alleged that in the bond 'per cent' had been omitted by mistake, he was allowed to adduce oral evidence to prove that the omission had been accidental. Similarly where there was a mistake in a conveyance regarding the property to be sold, the Court held that there was material mistake of fact, and the deed was rectified to give effect to the real intention of the parties (2). Courts administering equity, as a rule, would allow oral evidence to prove that words in a contract had been inserted by mistake (3).

A mistake, even if not detected, has legal consequences of avoiding the transaction provided there can be restoration of all parties concerned to their original position. Where a document is executed by an illiterate person and its contents are falsely read out to him, and the contract written differ from that pretended to be read, the executant can avoid the document, as in the eye of law he does not sign the document on which his signature is put. But, if on the other hand, the document had been executed by him after knowing its

(1) 1 M H R 320

(2) 2 C W. N 260

(3) 12 W R 532

contents (but misapprehending its legal consequence) he will not be allowed to resile from his position by denying execution (1)

Where by mistake there was no mention of interest in the *pro note*, interest would be allowed at 6 p c p a under sec 80 of the *Negotiable Instruments Act*, and oral evidence would not be allowed to prove a contemporaneous agreement to pay interest at a certain rate (2)

(E)

Thakbast Map, Batwara papers, Chittas, Quinquennial Registers, Registers of births and deaths etc

These are very often used as evidence in Civil cases So a few words need be said on the subject for the benefit of the beginners

The object of the *Thak Map* was to delineate the various estates borne on the Revenue Rolls of Districts (3) The *Thak Map* is not only evidence but is very good evidence as to what the boundaries of the properties were at the time of the Permanent Settlement, and also as to what they admittedly were at the time of the *Thakbast Survey* (4) It is open to a Court to presume that the existing state of things has continued from the time of the Permanent Settlement (5) Maps and Surveys made for Revenue purposes are valuable official documents, they are not conclusive evidence and may be shown to be

(1) 28 Bom 420

(2) 17 Mad L J 296, read 5 C L J 7

(3) 7 O W N 849

(4) 16 C W N 185

(5) 7 C W N 849

wrong by reliable evidence (1) The *Thakbast* Map is a good evidence of possession In a case where the *Thal* Map contains definite land marks and undisputed boundaries signed by the parties or their accredited agents it is good evidence as the parties or their agents must have admitted the correctness of the Map at the time of its preparation (2)

Maps and plans made by Government for private purposes or while acting in other than public capacity are not public documents and are consequently not admissible in evidence without proof (3) Measurement *Chuttas* made by Government for its own private use are not public documents and their evidential value is far less (4) *Chuttas* and Maps made by Revenue authorities in the course of measurement of Government *Mahals* are good evidence (5)

Certified copies of *Chuttas*, field books and maps are admissible in evidence (6) *Chuttas* and maps made in resumption proceedings, in presence of both sides or their agents, are also good evidence (7)

Survey maps are evidence only with regard to the physical features of the country Under certain circumstances Survey maps afford good evidence of title (8) It has been held by their Lordships of the Privy Council that the Courts should ordinarily treat the Survey proceedings as accurate and attach considerable importance to them (9)

(1) 9 C W N 383 28 C L J 323

(2) 8 C W N 995 and 22 C W N 396

(3) 5 C W N 287

(4) 9 C W N 741

(5) 13 W R 56

(6) 8 W R 187

(7) 2 W. R 192

(8) 15 C W N 353

(9) 13 W R P C 7

If it be found that the *Thak* and the Survey Maps do not agree, Courts will ordinarily prefer to follow the one which is in closer agreement with the local land marks. There is no general rule making it incumbent upon the Court to follow either (1)

A Survey award is *evidence quantum valeat* between the parties as to the fact of possession (2)

Quinquennial Registers are admissible in evidence (2(a))

Registers of birth are evidence of the fact and date of birth (3)

Measurement papers prepared by *Batwara Amins* are not evidence without proof (3(a))

N B—For burden of proof in cases of boundary disputes Read 27 C L J 590

(F)

Benami transaction (Read 22 C. L. J. 516 .

Benami transactions are frequent in India so where a father purchases property in the name of his son without any intention of advancement, the burden of proof whether what was *prima facie* the nature of the transaction was not so in reality is upon the person in whose name the purchase is made (4) So when a purchase is made by a Hindu or a Mahomedan with his money in the name of his children the presumption is that it is a *benami* purchase and it is for the party in whose name the property has been purchased to show that he is entitled to

(1) 9 C W N 629 (2) 23 W R 27 (2(a)) 20 C W N 940

(3) 22 C W N 822 Wilton & Phillips 19 T L R 390

(3(a)) 6 C L R 139

(4) 6 Moor & I A 53

the property to the exclusion of other legal heirs (1) But where there is no evidence to show the source of the purchase money there is no presumption that the property purchased in the name of a Hindu wife was purchased by the husband in her name (2) No doubt the practice of holding land *Benami* is inveterate in India, but that does not justify the Court in making a presumption against apparent ownership If a person purchases a property in good faith for consideration from a *benamdar* who was the apparent owner the purchaser gets good title to the property. (3)

Ordinarily the onus of proving that the person holding a property is a *benamdar* for another is upon him who alleges it

(G)

Alienations by

Hindu widows with or without consent of next reversioner—value.

It is now settled law that the doctrine of relinquishment and acceleration can not apply to partial transfers by a limited owner Such transfers can be supported only by legal necessity The consent of reversioner to this sort of transfer merely raises a strong presumptive evidence of legal necessity. (4)

In a case where the entire estate is transferred by a widow to the next reversioner, or to a third party with the reversioner's consent, the entire estate passes on the ground of relinquishment by the widow. But

(1) I L R 6 Bom 717 13 W R, 1 P C

(2) 11 C L R 41 Read 22 C L J 516

(3) 11 Moore's I A 602 13 C L R 280 P C

(4) 40 Cal 720—17 C W N 701 F. B

a partial transfer either by sale or mortgage has nothing to do with relinquishment. (1)

A purchaser for value after due enquiry is protected—*Vide* the well known case of *Hanuman Prasad Pandey v Babooee Munraj*—6 M I A. 393 In such a case, antecedent mis management of the estate does not affect the right of the purchaser, unless he was a contributory party thereto *Vide* section 38 of the Transfer of Property Act

There were some decisions (2) which favoured the view that partial alienation by a widow with reversioner's consent conferred good title to the purchaser, but this is no longer the law (3)

If two or more widows jointly possess their husband's estate, or possess it by division for mutual convenience and then one of them dies, the survivor or survivors get the entire estate, and can confer title by lease, mortgage or sale which would be operative only during the life time of the latter. (4)

From the case (5) it would follow that in case of legal necessity the widow can confer valid and absolute right to the purchaser for value

The consent given by the reversioner in every case raises a strong presumption of the existence of legal necessity as stated before. (6)

(H)

Possession—What it constitutes.

Occasional visits paid may constitute possession (7)
In fact, possession must vary according to the

(1) 10 Cal 1102 (2) 22 Cal 354, 35 Cal 939, (3) 17 C. W N 1062.
(4) 23 Cal 189 P C 8 C W N 658 35 All 189 (5) 40 Cal 710—17
C W N 701 F B (6) 22 C W N 226 (7) 11 W. R 136

nature of the property.—Subject discussed in 31 Cal 397. In other words, by possession is meant possession of that character of which the thing is capable of possession (8) When possession is based on title, possession of a part in the eye of law constitutes possession of the whole (9)

Possession—How proved.

It may be proved by both oral and documentary evidence Mere statement of a witness is not always enough—the witness should prove various acts of ownership actually exercised by a party (10)

Possession, adverse—What constitutes adverse possession

Adverse possession should be real and not constructive against the real owner (1). Acts at different times by fluctuating bodies of persons do not constitute adverse possession (2) Adverse possession against the lessee does not run against the lessor unless the latter becomes entitled to actual possession (3) So possession adverse to the mortgagee may not be adverse to the mortgagor (4)

Possession, value of

(1) Possession is prima facie proof of title 8 Bom L. R 93, Q. B. 1 (6), Q. B. 13, 945 (953)

(2) Possession is sufficient evidence of right of an owner as against a person who has no title whatever and is a mere trespasser (5)

(8) 12 A C 556

(9) 12 O C 58, 71 C 700 7 Mad 285

(10) 9 W, R 79

(1) 4 Cal 327 (329) (2) 31 Cal 397 (3) 20 All 593

(4) 27 All 395, 18 Bom 51 Read 23 C W. N 815.

(5) 20 Cal 834

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(10) 9 W R 79

(1) 4 Cal 327 (329) (2) 31 Cal 397 (3) 20 All 593

(4) 27 All 395 18 Bom 51 Read 23 C W N 815

(5) 20 C 1 234

(3) Possession has a two fold value—It is evidence of (i) ownership and (ii) of right to possess (1)

Possessory right—if heritable and transferable

Such right is both heritable and transferable
Asher v Whitlock (2)

I

Boundary dispute

In cases where scientific accuracy with regard to boundaries cannot be attained and in cases where the disputed line of division runs between waste lands which have not been the subject of definite possession the ordinary rule in a suit regarding possession that the onus of proof is on the plaintiff has no application (3) The parties to such a suit are in the position of counter claimants and it is the duty of the defendant as much as of the plaintiff to aid the Court in ascertaining the true boundary (4) In such a case the boundary line of the Revenue Survey map if relaid by a competent surveyor by starting from a well demarcated land mark is of considerable assistance to the Court But when the Commissioners map was incorrect and the Court of first appeal refused to order a fresh investigation the High Court in second appeal did not interfere with the discretion of the first Appellate Court (5)

The boundary line in the eye of law runs up to the middle of the boundary mark *e.g.* an *ail* or a road etc (6)

(1) 8 Bom L R 96

(2) 1 Q B 1

(4) 23 C W N 593

(6) 41 Mad 840

(3) 1 L R 21 Cal 904 (P C.)

(5) 2^o C W N 82

J.

Liability of a party or a witness for damages for defamatory statements made in pleadings, petitions or in evidence—Compared with their criminal liabilities—High Court's special jurisdiction to deal in contempt cases.

A party to a judicial proceeding may be sued in a civil Court for damages for defamation in respect of a statement made therein on oath or otherwise, but his liability in the absence of statutory rules applicable to this subject, must be determined with reference to principles of justice, equity and good conscience (1) But if any such party is prosecuted for defamatory statement or abuse his guilt will be determined with reference to section 499, I. P. C. (1)

The High Court has special jurisdiction, like the Supreme Court, to punish for contempt though such an offence may not come under the Indian Penal Code. Such an offence is an offence which by the Common Law of England is punishable by the High Court in a summary manner by fine or imprisonment [*Vide Surendra Nath Banerjee v Chief Justice of Bengal* (2)]

A party making a defamatory statement against a person, before a Police officer, is liable to be punished in a criminal Court, for defamation, if he did not make the statement in good faith for protection of his interest (3)

If a witness in a civil case makes defamatory statements, relevant to the issues and in good faith, he cannot be prosecuted for defamation (4) The

(1) 24 C W N 982 (Special Bench)

(2) 10 Cal 109

(3) 2 W R (Cr) 36

(4) 17 Bom 127, 573

question of civil liability for damages in a like case was recently considered in the case of *Crowdy v O'Reilly* (2) His liability depends on his want of good faith

A plaintiff may be prosecuted for defamatory statement not made in good faith in a plaint (3)

There are cases, though few, for supporting the view that a witness can only be prosecuted for perjury with the Court's sanction and not for defamation for statements made by him in the witness-box, but the weight of authorities are against this proposition (4)

(K)

Law as to interest—Reduction of interest.

For some time it was held that in a suitable case Courts had power to reduce interest agreed upon between the parties, if the rate of interest was very high and was hard and unconscionable (5) But after the recent Privy Council cases (6), it became difficult to get reduction of interest in civil suits Under the Usurious Loans Act passed in 1918 the Courts have power to re open the question of interest and grant relief by reduction of interest in case the Court finds the interest to be exorbitant, but this law applies only to transactions entered into between the parties after 1918, *Vide* section 2, clause (3) of the Usurious Loans Act (X of 1918 passed on 22, 3, 1918) (3) A stipulation to pay compound

(2) 17 C W N 551

(3) 11 Criminal L J 561

(4) 29 All 685 Judgment of Richardson J in 24 C W N 932

(5) *Vide* 20 C W N 408 = 22 C L J 311 44 Cal 162 42 Cal 690, 43 Cal 632

(6) 23 C W N 150 and 233 P C 20 C W N 110

(3) Under this Act Court can reduce interest even in *ex parte* cases. 44 Bom 775 (1920)

interest may, under some circumstances, be penal (4); but such a stipulation is not penal in every case (5). Urgent need for money on the part of borrower does not necessarily shew that the lender was in a position to "dominate the will" of the borrower (6)

Their Lordships of the Privy Council have held that it is difficult for a Court of justice to give relief on the ground of simple hardship, in the absence of any evidence to prove that the money-lender had unduly taken advantage of his position, even when the transaction appeared to be undoubtedly improvident

The law of *Damdapat*, under which the interest cannot exceed the principal sum, applies only to the Presidency towns, and has no application to Muffasil Courts (7) The law of *Damdurat* has no application when the parties are not Hindus (8) So the law of *Damdurat* cannot afford any relief to a debtor who is a non-Hindu (9)

(K1)

Acknowledgment—payment of interest—saving of limitation—Recent amendment of the Indian Limitation Act

Before the amendment of the Indian Limitation Act in 1927 payment of interest alone on any debt or legacy was sufficient to give a fresh start of limitation; but the amendment under reference has made it incumbent that all payments of interests, after the

(4) 21 Ind Case 111; 37 J. C. 749

(5) 25 All 287.

(6) 34 Cal 150 (7) 24 W. R 106 2 C W N 603 49 Cal 871.

(8) 5 Cal 867, 3 Bom 131 18 Bom 227 Read I L R, 40 Cal. 710.

(9) 21 Bom 38 and 85

1st day of January, 1928 must be in the handwriting of or in a writing signed by the person making the payment. The old section and the new section as the latter stands after the amendment are given below for proper comprehension of the matter —

Sec 20 Sub section (1) of the Indian Limitation Act as it stood formerly runs thus — 'Where interest on a debt or legacy is before the expiration of the prescribed period paid as such by the person liable to pay the debt or legacy, or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made

To the above Sub Section the following proviso has been added by **Act 1 of 1927 (Indian Limitation Amendment Act)** 'Provided that save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting or in a writing signed by the person making the payment" Sec 21 of the Indian Limitation Act also has undergone some amendment. The old Section reads thus —

21 (1) The expression Agent duly authorised in this behalf in Sections 19 and 20 shall in the case of a person under disability include his lawful guardian Committee or manager or an agent duly authorised by such guardian Committee or manager to sign the acknowledgment or make the payment

(2) Nothing in the said section renders one of several joint contractors partners executors or mortgagees chargeable by reason only of a written acknowledgment signed or a payment made by or by the agent of any other or others of them

The amendment introduced by the Act 1 of 1927 (Indian Limitation Amendment Act.) is as follows —

3 "To Sec 21 of the said Act the following shall be added namely —

(3) For the purpose of the said sections

(a) An acknowledgment signed or payment made in respect of any liability by or by the duly authorised agent of any widow or other limited owner of property who is governed by the Hindu law shall be a valid acknowledgment of or payment as the case may be as against a reversioner succeeding to such liability and

(b) Where a liability has been incurred by or on behalf of a Hindu undivided family as such an acknowledgment or payment made by or by the duly authorised agent of the manager of the family for the time being shall be deemed to have been made on behalf of the whole family

(L)

English equitable doctrine of Part performance as applied in India.

Under Sec 54 of the Transfer of Property Act a sale of immoveable property can only be effected by a registered instrument. So it seems that where a seller transfers his interest in any property to a purchaser for valuable consideration without executing a registered document, the purchaser does not acquire any interest in the property, but it has been held in some cases, on the analogy of the English Equitable doctrine of part performance of a contract, that where the vendor has put the purchaser in possession of property, he cannot eject him by a suit. It is up to the defendant in such a suit to invoke the aid of the equitable doctrine of part performance of the contract and plead that he is entitled to enforce specific performance of the contract of sale a part of which has been performed by reason of the payment of the purchase money. The Courts in India have recognised the said equitable right and have maintained a *status quo* till the execution of a formal deed of sale*. In a recent Privy Council case it has further been held—

* 40 Mad 1134 41 Bom. 433 F B., 27 C W N 159 31 C L J 75

that the party in possession is entitled to resist the plaintiff's claim, though the time for bringing a suit for specific performance of the contract has expired (Vide 42 Cal 801, P. C. and 39 Mad. 509 P. C.)

Hindu Law of Succession.

(1) Order of succession according to the Dayabhag School. (a) 1—3 Son, grandson and great-grandson 4 Widow 5 Daughter. 6 Daughter's son 7 Father 8 Mother 9 Brother, then step brother 10 Brother's son, then step brother's son (b) 11 Brother's son's son, step-brother's son's son 12 Father's daughter's son. (Sister's son, then step sister's son) then brother's daughter's son (c) Then step brother's daughter's son " 13 Paternal grand father 14 Paternal grand mother. 15 Paternal uncle 16 Paternal uncle's son 17 Paternal uncle's son's son 18 Paternal grand-father's daughter's son 19 Paternal great grand father. 20 Paternal great-grand-mother 21 Paternal grand-uncle 22 His son 23 His son's son 24 Paternal great grand father's daughter's son 25 Son's daughter's son 26 Grand-son's daughter's son. 27 Father's son's daughter's son 28 Father's grandson's daughter's son 29 Grand-father's son's daughter's son 30 Grand-father's grandson's daughter's son. 31 Great grand father's son's daughter's son 32 Great grand father's grandson's daughter's son. 33 Maternal grand father 34 Maternal uncle 35 Maternal uncle's son 36 Maternal uncle's son 37. Maternal grandfather's daughter's son 38 Maternal great grand-father. 39. His son 40 His grandson 41 His great grandson 42 His daughter's son 43 Maternal great-great-grandfather 44 His son 45 His grandson 46 His great-grandson 47. His

daughter's son 48 Maternal grandfather's son's
 daughter's son 49 Maternal grandfather's grandson's
 daughter's son 50 Maternal great grandfather's
 son's daughter's son 51 Maternal great grandfather's
 grandson's daughter's son. 52 Maternal great-great-
 grandfather's son's daughter's son 53 Maternal great-
 great great grandfather's grandson's daughter's son.
 54-86 Sakulyas 87-223 Samanodakas Then Bandhus

**Order of Succession according to the
*Mitakshara School.***

(1) Son (2) Grandson (3) Great grandson (4)
 Grandson's daughter's son (5) Wife (6) Maiden
 daughter (7) Destitute daughter, being the mother
 of male issue or likely to be so (8) Daughter in
 prosperous circumstances (9) Daughter's son (10)
 Mother (11) Father (12) Brother (13) Brother's
 son (14) Grand-mother (15) Grand father (Pater-
 nal) (16) Father's brother (17) Uncle's son (18)
 Paternal great-grand mother (19) Paternal great-
 grandfather (20) Grand uncle (21) His son,
 similarly and in the same order the paternal grand
 parents of the 4th, 5th and 6th degree and their male
 descendants (22) The rest of the Sapindas (23)
 Samanodakas (24) Bandhus (25) Spiritual preceptor
 (26) Pupil (27) Fellow student (28) The king

**Order of Succession to Yautuka *Stridhan*
 according to the *Dayabhaga School***

(1) Maiden daughter (2) Affianced daughter (3)
 Married daughters who have or are likely to have
 male issue, then barren daughters (4) Son (including
 adopted son) (5) Daughters son (6) Son's son
 (7) Rival wife's son (8) Great grandson in the
 male line (9) Husband (10) Brother (11) Mothe

(12) Father. (13) Rival wife's daughter (14) Husband's younger brother. (15) Husband's brother's son (16) Husband's sister's son (17) Brother's son (18) Son-in-law (19) Husband's Sapindas

Order of succession to *Ayautuka* (other than father's gifts) Stridhan according to *Dayabhag* —(1) Son and maiden daughter (2) Married daughters who have and who are likely to have sons (3) Son's son (4) Daughter's son and son's grandson (5) Rival wife's son, grandson and great grandson (6) Barren and childless widowed daughter (7) Great-grandson in the male line (8) Whole brother (9) Mother (10) Father. (10) Husband. (12) Husband's younger brother (13) Husband's brother's son (14) Husband's sister's son (15) Brother's son (16) Son-in-law 17 Husbands's Sapindas and Sakulyas and Samanodakas (18) Father's kinsmen

Order of Succession to Stridhan according to the *Mitakshara* School.

According to the *Mitakshara* School Stridhan is divided into two classes e.g., *Sulka* (i.e., received by the girl at the time of marriage or from parents) and Stridhan other than *Sulka*

According to the Bombay, Benares and Madras Schools, *Sulka* Stridhan is inherited according to the following order, e.g., (1) Uterine brother (2) Mother (3) Father. (4) Father's heirs (according to the order given before)

The order of succession to *Non-Sulka* Stridhan is as follows

(1) Unmarried daughter (2) Unprovided married daughter (3) Provided married daughter. (4) Daughter's daughter. (5) Daughter's son (6) Son.

(7) Son's son (8) Husband Then the property goes to the heirs of the husband Failing that the property goes to her mother and then to her father and then to her father's heirs according to the regular order of succession

Order of succession to the *Stridhan* of a maiden

(It is same under all the schools)

(1) Uterine brother (2) Mother (3) Father
(4) Father's heirs in order of propinquity (5) Mother's heirs in order of propinquity

CHAPTER II

In this chapter important rulings and references which are frequently required by lawyers have been alphabetically arranged It is hoped this chapter will be found useful by the **Bench** and the **Bar**

[Where no reference has been given references are to this book]

Abatement—of rent when can be claimed in Rent suit 29 C W N 381 See measurement—see Mortgage suit—25 C W N 595 See Part II Chap II No 15

Abwab—See Sec 74 B T Act *Dak cess* is not—1 C L J 110 (N) Puja charges are—25 C W N 72 (n)

Absolute—of mortgage decree to be made within 3 years 19 C W N 649

Account Book—Every entry is required to be proved—15 C L J 621

Account Suit—See hints to plaint no 18 in Appendix to Part II at page 15^o

Acknowledgment.—may be by implication—7 Bom 515 13 C L J 139

Admission—must be taken as a whole 41 M L 525 2 Pat L J 658

For effect of admission by a pleader, Read 13 All 272 F B 21 Mad 274 admission—by one defendant effect of see—44 Cal 140 —of mortgage bond by one defendant the bond to be proved against other defendants—44 Cal 366

Adverse possession—is an incumbrance 45 Cal 755,—of trespassers cannot be tacked against real owner 2 C W N 315 21 C W N 642,—must be specifically pleaded—3 C L J 316, 20 C W N 310,—against mortgagor—if affects mortgagee—23 C W N 815,—by co sharer effect of—21 A L J 204,—of tenant—when and when not effective 44 Mad 831 Non payment of rent is not—17 C W N 627

Amendment—of execution petition is not allowed 17 Cal 631 But formal amendment may be allowed in certain circumstances 22 C W N 542 Read 27 C L J 398 52 I C 765 (Madras case) for amendment of plaint and decree See Part II Chap II

Arbitration—See Part I Chap 10

Attachment—rules as to—see General Appendix in Part X See Part I Chapter VIII

Revival of—when—3 P L J 310 48 I C 386 —before Judgment in mortgage suits—when allowed—46 Cal 245 Cannot be ordered of immoveable property by S C C. Court after amendment of C P Code of 1926

Attestation—see Law as to attestation in Part V Chapter I—is no evidence of knowledge of contents—21 C W N 225 See hints to plaint No 8 in Appendix to Part I at page 118

Award—See—suit to enforce a private award in Part I Appendix at page 188

Bargadar—may be a tenant or labourer—23 C W N 614, For suit against—see hints to plaintiffs Nos 4 (a), 4 (b) in Part I appendix at page 110

Benami—See Part V Chapter I What has to be proved in *Benam* 20 C W N 522 P C For presumption of *Benami*—if property stands in the name of near relations—Read 39 M L J 296 24 P L R 153 (P C) 23 Bom L R 730, Circumstantial evidence, motive, conduct etc to be proved to shew *Benami*—23 C W N 817 P C—17 A L J 410—16 M L J 483

Benamdar.—Can sue for ejectment 33 C L J 369 P C *Contra* 1923 All 10, transfer by *Benamdar* binds the beneficial owner 1919 Pat 404, 20 C W N 65 P C No estoppel of real owner against *Benamdar*—when?—Read 38 All 122

Bengal Tenancy—rulings under, See Part II (A) Chapter I pages 265 to 286

Bid (See page 207)—at Court sale cannot be withdrawn, 19 C. W N 633 Court has absolute discretion either to accept or reject bid before the Nazir, 19 C W. N 633 D. H cannot withdraw bid offered by him, 18 C L J. 53

Bond—by minor's guardian—when binds minor 3 P L J 78 30 Cal 539 at pp 548 31 I C 811, 35 Cal 320

Boundary—Extends up to the middle of the boundary mark 22 C L J 872—Discrepancy between boundary and area—which to prevail 16 Bom L R 42—15 M L J 68 P C

Boundary dispute—See last Chapter No (I) in this part.

Boundary document—Evidentiary value of documents of lands on the boundaries of disputed 1 is very weak. 14 C L J 467, 17 C W. N

But in a recent case it has been held that it is of no evidentiary value; 25 C. W. N. 1022.

Certificate of payment after 90 days.—Not allowed, 23 C. W. N. 321. But decree-holder can certify payment in an execution application if not time-barred. 26 C. W. N. 529, 534; Read 16 C. W. N. 923; 19 C. W. N. 650; 20 C. W. N. 615. For mode of certifying payment—Read 1918 M. W. N. 507. and 20 C. L. J. 151 (by D. H. at any time).

Civil Procedure Code—for rulings under—see parts I and II under appropriate heads.

Compromise.—See Part I Chap. XII. pages 77 to 81.

Compromise decree.—setting aside of—under order 9 R. 13, Read 19 C. W. N. 110 and see Chapter XII in Part I. at page 80.

Commission and Commissioner.—See Part I. Chapters 8 and 9 and Part II. Chap. II. at pages 218, 219.

Contribution.—See Hints to plaint no 15 at page 142 in Appendix to Part I. Recent case—30 C. W. N. 366. Suit by mortgagees for—after satisfying decree against mortgagor; 1923 All. 127. Liability of each defendant must be specifically mentioned 12 All. 110. Suit for—a co-judgment-debtor suing another judgment-debtor for contribution after satisfying a decree against all, cannot get contribution in respect of cost of deposit—14 C. W. N. 945. Read 19 C. L. J. 72; For liability of unrecorded tenant to contribute to the tenant who satisfied a rent decree; Read 3 C. W. N. 384;—by co-sharer—a co-sharer keeping another out of possession cannot sue the latter for contribution on account of rent paid 4 Cal. 566; 6 C. W. N. 903 and 89.

Co-plaintiffs—When added—effect—Limitation—Read 17 Cal. 580 P. C.; 26 Cal. 409.

Corporation and Firms—See Part I Chapter XIV.

Co-sharer—Contribution amongst co sharers—see *contribution*, Co sharers—Damage suit between—if lies—23 C W W N 900 902, 32 Cal 837—See hints to plaintiffs No 16 and 17 in Appendix to Part I at pages 145 146

Co-sharers (*Continued*)—Possession of one is possession of all unless ouster is proved, 26 C W. N 207, 23 C W N 90—29 C L J 504, 23 C W N 900, 74 I C 193,—improvement by one—if compensation can be claimed from another—46 Mad 104

Court Fees Act.—See Part X App (A). Refund of excess Court Fees paid—46 I C 271, 40 Cal 365

Custom—what should be proved for proving a custom e.g. that it is (1) invariable, (2) uniform, (3) reasonable, (4) certain, (5) ancient 31 C L J at P 42, it may be in course of growth—6 I C 291. Particulars to be given in pleadings—19 Mad L T, 296, Read 41 Mad 374 F B

Damages—in rent suit can be allowed even when rent is payable in kind 29 C L J 234

Damage suit.—(1) Against Railways—see hints to plaintiff No 14 in Part I Appendix at pages 139, 140

—(2) Between co sharers—Read 23 C W N 902 and 32 Cal 837 (3) For suits for damages for trespass, see 20 A. L. J 888—for wrongful *dismissal*—13 Bur L T 168—(4) for *mesne profits*—40 All 142—(5)—for illegal restraint 1922 All 139—(6) Damage suit for maliciously taking an order of injunction, Read 45 P L R 1922

Damage suits for trees or crops cut and taken by tenants—See hints to plaintiffs Nos 16 and 17 in Part I Appendix at page 145—if no criminal offence is

involved in such a case—the suit is triable in a Small Cause Court 23 C W N 135 (notes) See 45 L C 11 (Madras) 42 All 52 —Vide article published in 23 C W N 207 (notes)—if criminal offence is involved the suit will be triable in regular file 20 C W N 216 (notes) —Damage suit is not maintainable if plaintiff is out of possession of the land 5 Bom 572, See 23 Cal 884 at P 894 Read also 9 Cal 283 If defendant be acquitted by Criminal Court the suit may be triable in S C C file 27 C W N 469, such a suit between co sharers is triable in S C C file 19 C W N 872

Damdupat.—Law of—see Interest and last Chapter

Death—of Respondent —no substitution in time in rent suit the suit may fail 11 C W N 504 26 C W N 71 (notes) —of defendant in mortgage suit after preliminary decree—no substitution in time—the suit abates, death of parties pending appeal—the appeal abates—27 Mad 588 for when suit does not abate on death of plaintiff or defendant—Read 33 All 645

Decree —(1) Suit to set aside decree on the ground of fraud 43 Cal 217, 11 A L J 514 11 I C 626 —also Read 43 Cal 217 20 C W N 819 18 C W N 681 15 C W N 1010,—decree of a higher Court can be set aside on the ground of fraud 33 Cal 180 P C . 41 Mad 213,—suit lies to set aside a decree on the ground of mistake, 28 Bom 420, For amendment of decree—See Part II Chapter II Nos 32 to 34

Decree absolute —if the mortgage money was not deposited in the Court—the Court should make the decree absolute without enquiry as to payment, 21 C W N 920 42 Mad 61 2 Pat L J 533 An application for decree absolute must be made within three

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Decree in Sec. 9 Case—good evidence of possession, 6 C W. N. 621

Deposit.—Can transferee of occupancy holding get a sale set aside by making a deposit? Yes—20 C W N 39 (case under B. T. Act) [*authorities are not unanimous on the point*]

Deposit—not necessary for setting aside an *ex parte* rent decree when the amount of *jama* or relationship of landlord and tenant is denied. Read 16 C W. N. 970 (case under B. T. Act)—Deposit of rent before it is due is invalid. 31 I C. 183

Deposit under Sec 170, B. T. Act—by purchaser of occupancy holding—not allowed. 27 C. W. N. 127 (notes) *Contra* 31 C. W. N. 1050; 7 C L J 282

Dispossession.—Mere discontinuance of payment of rent by a tenant does not constitute dispossession within the meaning of Sec 9 of the Specific Relief Act; 14 Cal. 649 at pp 652. Read 17 C W N. 1092 For dispossession of auction-purchaser, see hints to plaint No 14 in Chapter II Part II and 1 C W. N. 724—13 C. W. N. 724,—possession of a person with title cannot be adverse possession; 12 M. L. J. 218 —Isolated acts of possession may not constitute dispossession—Read 13 N. L R 25—11 Bom. L R 1087; 21 C. W. N. 642

Documents—filing of—See Part I Chapter VI and read 18 W. R 518.

Dwelling House.—under the Partition Act also means land appertaining to the house and necessary for enjoyment—12 C. L J. 525; 49 I. C. 16—partition, of dwelling house how effected—Read 6 I. C 109.

Ejectment—See hints to plaint No 22 in part I App I at pages 162, 163—Landlord may eject a purchaser of non-transferable occupancy holding who purchased a substantial part of the holding and a small portion was left out with a view to avoid ejectment—29 C L J p 1. In an ejectment suit plaintiff has to prove that the tenancy has been legally determined—39 M L J 629.

Ejectment suit—By a co-sharer landlord is not maintainable, 31 Cal. 786, 35 Cal 807. Read, however, 38 Mad. 445—one co-sharer can sue for ejecting a trespasser—44 All. 634.

Estoppel—Between Landlord and Tenant regarding tenant's status—Read 5 C L J. 522.

Estoppel—Lessee is estopped from denying landlord's title—when—19 C W N. 1207, 24 C L J. 103 Read also 20 A. L. J. 907—3 Lah L. J 227. A minor is not estopped by the act of his guardian—17 C W. N. 10. Where fraudulent silence may mean estoppel—6 C L J 601, 73 I C 223 Read also 9 All 413.

Evidence.—Documentary—See Part I. Chap VII.

Executing Court—(1) Cannot go behind the decree; 44 Cal 627; but can refuse to execute a decree passed without jurisdiction; 53 Cal 166 F. B The decree must be executed by the Court which passed it; For meaning of "transfer of business"—Read 26 C.W.N. 216

Execution of decree.—After one year, without service of notice on judgment-debtor; subsequent orders passed in the execution case are without jurisdiction 44 Cal 954 at page 961.

Execution petition.—See under amendment; see No 6 in Ch II Part II—Execution petition dismissed

missed for default cannot be revived under Order 9, Rule 9 C P C, 19 C W N 25—continuation of of previous application—when can be, 22 C W N. 766, 21 C W N 571

Execution of Rent Decree—See Chapter I Part II (A)—if there be payment and acknowledgment within three years then rent decree passed under the B T Act may be executed after 3 years like a money decree 26 C W N 486

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Firms—Suit against—See Part I Chapter XIV.

Fraud—See Part II Chapter II No 10, at page 213 and Part IV Chapter I See under 'decree'—*fraud antecedent to sale*—if can be considered in a sale set aside case? Yes, 17 C W N 478, but read 36 Cal. 654 also

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Government servant—Cited as witness—costs etc --for rules see Appendix in Part X.

Guardian—of a minor defendant cannot be appointed without express consent of the proposed guardian—if appointed without express consent—minor is considered as unrepresented in the proceeding and it does not bind the minor—15 C L J 446, 26 C W N 781, 19 C W N 935 See Ch XV in Part I at page 94

Guardians and Wards Act—See Chapter II in Part III at pages 330 to 336

Heirs of tenants—See under the B T Act Chapter I in Part II (A) Read 27 C W N 511 and 21 C L J. 371

Hindu Law—See last Chapter—Reversioner is bound by debt contracted by widow for legal necessity—23 Cal 766 P.C., 15 C. L. J 423,—decree against

widow how far binding on reversioner—18 C W N 929 P C 25 C W N 585 13 C L J 575 P C

See hints to plaint No 28 in Appendix to part I at page 184—Acceleration of inheritance—25 C W N 134 P C—Adverse possession against female owner—its effect—3 C W N 621 P C—*Stridlan* by inheritance—see 20 C W N 627 Succession to *Stridlan*—see last Chapter (M)

—For modes of acquiring joint property—see 30 I C 216—for presumption of joint property—see 30 I C 216—For presumption of joint property and of joint fund Read—31 All 477, 5 C L J 340 P C Read also 12 Bom L R 133 in this connection

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Incumbrance—under the B T Act—*annulment of*—strict proof of service of notice under section 167 the B T Act is necessary—an entry in the order sheet that notice was served is not sufficient—7 C L J 262 22 C W N 788 See also *adverse possession*

Inherent power—(1)—of Court see Part II Chapter II Nos 31 to 34—for using inherent power of Court for ends of Justice—read 26 C W N 408—not to be exercised against statute 19 C W N 835—to recall order fraudulently obtained—31 C L J 48

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reduce interest 19 C W N 809 See Usurious Loans Act in Part IV Chapter II for powers of Court to reduce interest Law of *Damdapat*,—See page 465 under which interest cannot exceed the principal applies when parties are Hindus 5 Cal 867, 3, Bom 131 18 Bom 227, 24 Bom 305 But this law does not apply to mufassil Courts, 1 Cal 92, 2 C W N 603 and 9 Cal 871, does not apply when debtor is a non Hindu 21 Bom 38, 85

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Interpleader Suit—Tenant cannot bring—against rival landlords—15 C L J 653

Invalid document—No suit necessary to set aside a document which is *ab initio* void—no limitation to challenge such a deed—26 C W N 479

Issues—See Chapter V Part I

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Judgment—(1) May be delivered by successor of Judge—35 Cal 756—when can be delivered on a holiday 39 All 136—after transfer of Judge, 7 C L J 66 F B, 35 Cal 756

Kaisthas—are *Sudras*—25 C W N 634 See under Marriage

Khatta Accounts—for this read 22 Bom 671 and see Chapter VI Part I and hints to plaint No 6 in Part I Appendix at page 112

Kistibandi bond—default of payment, when amounts to waiver and when not 11 C W N 602
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Land Acquisition Act—See Part III Chap V for Law and rulings at pages 352 to 362.

Landlord—No adverse possession against landlord unless the landlord has right to possession after determination of tenancy—22 C W. N. 853

Lease—under the B T Act—*under-rayat* for nine years, with stipulation as to renewal for another 9 years—if valid? Yes. 20 C W N 948—to *under-rayat* for over nine years is void 17 C W. N 468 (Read 22 C W N 61)—to *under-rayat* by *rayat* for over nine years—*under-rayat* if he was in possession and is subsequently dispossessed can recover possession from *rayat* by suit—22 C W N. 61.

Legal Practitioners Act—See Part IV Chap I for Law and rulings at pages 409 to 425

Limitation—See Limitation Act Part IV Chap III.

Local inspection—by Court—Court not to talk with outsiders 44 Cal. 711

Local investigation—Commission for—See Part I Chap. IX (pages 61-62) and Part II page 219.

Lunacy Act—See Part III Chap III page 336

Mahomedan Law—Minor husband cannot divorce 7 I. C. 820—Dower may be fixed even after marriage 3 All. 266—Presumption—under—Read 20 C. W. N. 1048, 17 Cal 543 F. B—Gift under—how made 38 All. 627 P.C—for *Heba*—Read 25 C. W. N 761—will under-need not be probated—15 C. W. N. 185, 37 Cal 829—Mahomedan will requires no attestation 43 Bom 641—For *Mutuali's* power etc—Read 24 C W. N. 996, 22 C. L J 577.

Mahomedan mother—Sale or lease on behalf of minor children by Mahomedan mother is void. 45 Cal 878, 23 C. W N. 50.

Marriage --Inter caste—between sub castes of the same caste of Hindus—between *Teli* and *Kayasthas* who are *Sudras* held to be valid—25 C W N 634 If parties are Christian, the marriage must be celebrated under the Christian Marriage Act, 31 All 236 --Marriage is dissolved by apostacy of one of the parties 39 Cal 409—or by death or divorce 64 I C 943

Material irregularity —See notes No 10 in Part II Chapter II under applications for setting aside a sale (pages 210 to 212)

Measurement —of land in a proceeding under section 52 of the B T Act is not absolutely necessary for granting abatement of rent to a tenant, 14 C W N 152

Mesne Profits —*suit for*, jurisdiction of Court, 39 I C 439 —when can be allowed 51 Cal 853

Minor —Can sue on a Pro note executed in his favour 23 Bur L J 227 --For sale in favour of a minor—Read 33 Mad 312—Sale by minor—setting aside of—See 45 All 644 —contract not for benefit of a minor cannot be enforced, 26 Bom 326, 29 All 213, Read the Full Bench Case in 34 Cal 163—Mortgage in favour of—valid—22 C W N 130—if unrepresented proceeding does not bind—50 I C 783, 19 C W N 935 24 Cal 25

Mistake --See last Chapter

Mohanta—who is a—his powers See 22 C W N 841, 24 C L J 116

Mortgage bond —See last Chapter under “Attestation —by illiterate executant—Scribe writing name of the executant cannot be an attesting witness to the bond 49 Cal 438, 23 C W N 290 Where,

admitted but attestation is denied—attestation has to be provided 27 C W N 263 —In *Ex parte* cases need not be proved by attesting witness Vide Act XXVI of 1926 See hints to plaints Nos 8 9, 10 in Part I Appendix at pages 118, 125 128

Mortgage suit—(1) Compromise of—decree absolute—not necessary 14 C L J 648

(2)—In a mortgage suit if a defendant claims adversely to mortgagor—such a defendant should be dismissed from the suit 31 All 11 30 All 240—Against some heirs of mortgagor—such a suit should be decreed proportionately against the heirs on the record 25 C W N 594—death of defendant after preliminary decree, in a mortgage suit no substitution made within time—suit will abate 25 C W N 595

Mortgagor—Release of one—effect see “Release”

Nazir—is not—a bailiff 1 P L J 150

Notice—(1) to eject an under raiyat—will be valid if signed by one landlord on behalf of all—23 C W N 76—See hints for a suit against Railway Company—plaint No 14 in Part I App at pages 133 to 140 and See ‘Public Servant’ Notice to wrong person—proceeding is irregular—25 Bom 337 P C

Notice to quit—If tenancy be not agricultural—15 days’ notice would be sufficient 44 Cal 403 See hints to Ejectment suit—No 22 in Part I Appendix at pages 167–163

Occupancy holding, non transferable,—sale of—see *Ejectment*—sale and attachment of—by Court allowed after Special Bench ruling in 31 C L J 510—Transferability of—31 C L J 510 S B—can be

• sold by Court like all other property. 24 C W. N. 818 S B

Onus—See under "Possession" in last Chapter

Oral lease—*for 3 years—followed by possession is valid* 49 Cal 345

Pardanashin Lady—(1) Mortgage bond by—attestation—See 22 C W. N. 697 (2) *Deed* by—independent advice—fiduciary relationship of purchaser—presumption 26 C W N 316—See Chapter 1 (A) in Part VI Page 449

Partition Act.—See '*Dwelling house*'.

Partion deed, if unregistered—Partition can be proved by oral evidence as well as by evidence of possession, 41 Bom 466

Part Performance—Doctrine of—See last Chapter (L)

Party, Liability of (Civil and criminal)—Read 24 C W N 982 And see last Chapter

Pauper-Appeals—How presented—26 Mad 369; 24 All 172

Pauper suits—for rulings under this head—see Part I Chap XIII

Payments—certification of—see No 5 in Chap II in Part II and 26 C W. N. 529—*contra* 23 C W. N. 320—*to be made within the time fixed in Solenama* in a sale set aside case If payment be not made in time the sale must stand good and the Court cannot accept money afterwards under its inherent powers. 26 C W N 408—time fixed in the compromise petition, for payment—can be extended by Court under its herent power where forfeiture of tenancy is

—33 C L J 244 25 C. W N. 545, 34 C L J 157—not certified in time—allegation of fraud,—question of fraud cannot be enquired into in a proceeding under Or 21 Rule 2 C P Code 16 C L J 174

Permanency of tenure—For circumstances from which presumption can be raised—Read 27 C W N 969—Where origin is not known—permanency may be inferred from long possession, uniform payment of rent etc—29 C W N 139 1923 Mad 54, 1923 All 486 See hints for Ejectment suit plaint No 22 in Appendix to part I at pages 162–163

Permissive possession—if can be adverse—Yes if hostile title if asserted afterwards—19 C. W. N 126

Plaint—how to be framed in a rent suit for getting a rent decree 27 C. L J. 101; 59 I C 91—amendment of—See under Amendment and 5 C W N 273 and 20 C W N 1276—For hints for drawing up plaints in various suits—see Appendix to Part I

Pleading—if not verified—should be struck off—2 C L J See details in Chapter IV Part I

Possession—Symbolical See last chapter (H)—*A plaintiff out of possession cannot maintain a damage suit for trees or crops taken*—21 Cal 244—*Adverse to mortgagor is not adverse to mortgagee without possession*—limitation against mortgagee runs from the time he has right to possess—23 C. W N. 815 See 36 All 567, 39 Mad 811—*What constitutes*—11 W R 136, 31 Cal 397—*Possession of part is possession of the whole*—7 I C 700; 7 Mad 285—*How proved* 9 W. R 79—*when adverse*—4 Cal 327 at page 329—*prima facie proof of title*—8 Bom L R 96.

Power of attorney—Has to be proved 17 Cal 903 and it ceases with the death of Principal, 23 All 233

P C must give specific powers clearly to the agent
29 C L J 303—For draft see Part VII

Presumption of permanent character of tenancy arises from 20 years rent receipt showing payment of rent at the same rate 22 C W N 126—No presumption arises under section 50 of the B T Act where it is proved that the tenancy was created 40 years ago 23 C W N 1041—presumption as to genuineness of 30 years old documents—applies also to copies -41 P R 1913 41 All 590 16 C L J 24

Probate and Letters of Administration Act—See Part III Chap I

Provincial Insolvency Act—See Chapter IV in Part III

Provincial Small Causes Court Act—See supplementary Part IX

Public servant, suit against—(1) No notice would be necessary if the act complained of was not done by the defendant in his official capacity taking advantage of his possession Read 26 All 220 36 Cal 28 Notice is unnecessary if the act is done *mala fide* But read 28 C W N 10—where it has been held that notice will be necessary for act done even *mala fide* but in official capacity (See Editorial comments at 28 C W N 2 notes) See Chap IV in Part I A Chairman of Union Pachayat in a Public servant 1 M W N 384

Quinquennial registers—are public documents and are therefore admissible in evidence with proof—20 C W N 940—See last Chapter

Railways—Suits against—See hints to P 14 in Appendix to Part I at pages 138 to 140

Receiver—See Part II Chapter II No. 26 at page 220

Record of rights—entry in—is good evidence of possession—21 C. W. N 175

Redemption suit—For extension of time of payment—See 45 Mad 202, 27 Cal 285

Registration—(1) *All mortgage bonds* must be registered after 1st January 1905—12 I. C. 25. Permanent tenure can be mortgaged only by a registered document. 3 C. W. N. 499. (2) *of Kabala*—unregistered *Kobala* in respect of property valued at even less than Rs 100 does not pass title but title may pass by delivery of possession. 8 Cal 597 at page 612, and 19 Cal. 623 F. B. Read 22 Cal 179. (*In this case valid title was acquired by possession.*) (3)—When no notice of transaction—23 Cal. 790 at 794—for list of documents requiring registration see sections 17-22 of the Indian Registration Act See also Chapter on Registration in Part VII.

Register of births and deaths—is a public document, 22 C. W. N. 822. See—also last Chapter

Release—See "*Tort fausure*"—of one mortgagor does not operate as release of other mortgagors 44 Cal 162—Deed of release cannot create title where there is no title with the person in whose favour the deed of release is executed. 16 I C. 440, 23 C. L. J. 26

Renewal—See Lease

Rent—(1) What is a—15 C W. N. 820

Rent Free Land—presumption of lost grant from long possession without payment of rent can be made—31 C W. N. 135 Read 4 M. I A 497 P. C

Mere non payment of rent does not give rise to any presumption in favour of a person who was once a tenant 27 C L J 281 (B T Act)

Rent decree—(1) Execution of—if a sale held in execution of a rent decree is set aside by first Court and the appeal from that order is also dismissed execution case is revived—if decree holder at this stage fails to prosecute the execution and the execution case is dismissed for default—second application for execution may in certain circumstances be considered as a continuation of the first execution proceeding—but if the second application is made too late the decree may be time barred and the execution will fail 22 C W N 766

(2) Execution of rent decree by stating payment in execution petition to save limitation—can be allowed 26 C W N 529 See Chapter II in Part IIA for further information

Rent Sale—if decree holder had previously recognised a private purchaser as tenant and then the sale was held—nothing could pass by the sale—23 C W N 658 If the notice under section 158 (B) of the B T Act was not served on co sharer *landlords*—the sale held in the execution case is not a rent sale. 23 C W N 931

Rent suit—(1) *damage in* can be allowed even when rent is payable in kind—29 C L J 234

(2) Can a new plaintiff be added after limitation period? Yes—19 C L J 5

(3) If a tenant sets up title of a third party who appears and supports plaintiff's claim—in such a case the Court may decree the suit without determining the question of title 17 C W N 62 ✓

Restitution—See No. 34 in Part III Ch. II at page 224

Reversioner—consent of—to alienation by Hindu Widow—effect of—19 C. W. N 89 notes see last Chapter—*suit by Reversioner limitation*—suit to be brought within 12 years of widow's death 8 C W. N. 535—for suit by reversioner to stay sale and sale by widow and Law on the subject—see hints to plaint No 28 in Part I Appendix at page 184

Review—See Part III (A) Chapter II at page 390.

Revival of execution case—*after sale is set aside*. Read 22 C W N 766 and 21 C W. N 769 See under —“Rent decree”

Sale—setting aside of—for rulings see hints to Nos 9 and 10 in Chap III Part I—for limitation for setting aside a sale see 50 I C 914.

Sanction Appeal—Cannot be heard by Sub-Judge 16 C W N 903

Sanction case—Review of order not allowed in—23 Bom 50—sanction case should not be dismissed—32 Bom 203—Remand by appellate Court of sanction case is not permissible—30 Mad 311, 8 C L J 429—Notice to opposite party not always necessary. 41 Cal 446—no sanction where no chance of conviction, 23 Mad 210—Application for sanction should be made at the first opportunity—25 I C. 329, 26 I C. 146—Sanction is not granted to satisfy private grudge 3 C W. N 3—In sanction cases summary of evidence to be taken by Court—42 Cal 240—Based on comparison of hand-writing should not be granted—21 C. W. N. CXLIV notes—Sanction to a private party—not to be granted after 1st September 1923 under the amended Criminal Procedure Code

But copy of order should be sent to the Criminal Court for prosecuting the accused *Vide* new Section 195 of the Cr P Code and Chapter XIII of Part VI (Cross-Examination)—no sanction to be granted when appeal is pending from the judgment of the first Court—6 Cal 308—lapses—after six months from the date of granting but the Court may grant fresh sanction—22 Cal 573 and 22 Cal 173—The High Court can extend time—32 Cal 379, 12 Cr L J 382—may be disposed of even after examination of peon—41 Cal 442

Sanction when not necessary—(1) no sanction is necessary where officer concerned is a bailiff and he is personally a complainant—1 L R 1 Pat 423

(2) not necessary unless the offence comes under any of the sections mentioned in sec 195 Cr P C—34 All 654

Scribe—When can be an attesting witness—26 C W N 264 (See also last Chapter)

Section 9 Case under the Specific Relief Act—Huts erected by defendant cannot be ordered to be removed in Sec 9 case, 25 Cal 803, 3 C L J 38 (notes)—A trespasser cannot maintain—12 C L J 605—no Sec 9 case lies after dispossession by order under Sec 145 Cr P C 12 C W N 696, 22 C W. N 931—partial dispossession may give a right to sue—3 Mad 250—no appeal lies in an execution proceeding arising out of a decree passed in a Sec 9 suit 22 C W N 446—for further particulars see *hunts* to plaint No 21 in Appendix to Part I at pages 159, 160

Security bond—filed in Court to be stamped a regular bond—21 C W N 1150 *contra* 49 Cal. Read the Full Bench case in 29 C W N 851

Service—See summons

see under Permanency of tenure at page 488 See notes under B. T. Act in Part II A Chapter I.

Thak map—value of—22 C. W. N. 396 See last Chapter.

Tort-feasure—in a suit for damage for tort—if *one of the tort-feasures be released*—the suit cannot proceed against the rest, 29 C. L. J. 245

Tout—how declared—11 C. L. J. 513.

Uncertified payment—*Saving of limitation*—See cases collected in 24 C. W. N. 38 (notes) See under "*Payment*" at page 487.

Under-raiyat—can acquire occupancy raiyat by custom 22 C. W. N. 618 See Part II A

Under-raiyati lease—*for more than nine years*, no valid title is created, but if the tenant is put into possession he cannot be ousted except in due course of law. 19 C. W. N. 468 Read 19 C. W. N. 1127—See also under "*Lease*."

Verification—of *plaints*—See Chapter IV in Part I.

Voting—right of, son paying income tax jointly with father—can vote at a Municipal Election 26 C. W. N. 212 (Bengal case)

Waiver and Compromise—See No 10 Chapter II Part II

Widow—decree against, effect on reversioner—28 C. L. J. 519; 19 M. I. A. 543—binds reversioner—22 C. W. N. 306—Decree for rent accruing during widow's time does not bind the property—widow is personally liable for claim 17 C. W. N. 337.

Withdrawal—of *suit* if disallowed—the Court should proceed with trial 20 C. W. N. 1011. 3 Pat.

L. J. 460.—notice of withdrawal must be given to defendant. 44 Cal. 454—in appeal without sufficient ground was held to be without jurisdiction, 44 Cal. 368. But this is no longer the law, Vide 31 C. L. J. 482. See Chapter XII Part I and notes under No. 16 in Part II chapter II—allowed for formal defect only and not for any other insufficient cause—3 All. 568.

Witnesses, liabilities of (Civil and Criminal)—
Read Special Bench Case in 24 C. W. N. 982—33 C. L. J. 94 (See last chapter).

Witness.—Government servant as—expenses allowed to—see General Appendix in Part X.

THE
CIVIL COURT PRACTICE & PROCEDURE.

PART VI.

Practical Examination

AND

Cross-Examination of Witnesses

IN

CIVIL CASES

IN

THIRTEEN CHAPTERS

Containing

Practical hints all through.

1

2

3

4

5

6

Examination and Cross-examination of witnesses in Civil Cases.

CHAPTER I.

Cross examination is an art which can be learnt only by actual practice, and no amount of theoretical instructions, however sound, can coach a junior practitioner to any efficient standard. The hints given in this part are intended to set on work the thinking faculty of young men in a particular direction, and it is hoped that this power of thinking, gradually developed in the practical field will be of material help in shaping the legal acumen of the junior lawyer for the purpose of cross-examination. It is difficult to lay down any hard and fast rule which a legal practitioner should follow in cross examining a witness. The range of cross examination is so wide that long experience alone can teach what should be the best way of cross examination in a particular case.

Preparation for conducting a case

A practitioner, when he takes up a case, should thoroughly study not only the points in favour of his client but also those against him, so that he can fully meet his adversary's case during the trial of the suit. It need hardly be mentioned that every lawyer must devote his whole hearted attention to the case in his hand and study its facts and legal aspects thoroughly and find out authorities in support.

A pleader who goes to conduct a case, quite unprepared, cuts a lamentable figure when interrogated by the Court on some material points. The practice of consulting the client, or his *tadbirkar*, at every step should be avoided as far as possible, as such a practice may create an unfavourable impression on the Court.

Opening of the case.

The pleader, appearing for the plaintiff in a suit, should give a brief account of his case at the time of opening, in a clear and logical way; and this can only be done best if the points were previously thought of and arranged.

Order of examination of witnesses.

Ordinarily, plaintiff's pleader will examine his witnesses to substantiate the allegations made in the plaint and to give a denial to points raised in defendant's written statement which are not admitted by plaintiff. This is examination-in-chief. After the examination-in-chief is finished, the defendant's pleader will begin to cross-examine plaintiff's witnesses. The function of cross-examination is to test the value of the statements made by a witness examined by the plaintiff; and this is done by putting such questions to the witness as will bring to light the veracity or otherwise of his statements made in examination-in-chief. After plaintiff's evidence is closed, defendant's witnesses are examined and cross-examined in the usual way.

Necessity of studying the record.

The necessity of studying the record can never be too much emphasised. This is what should be done

by the pleader in every case, before proceeding with the cross-examination. A pleader, who has a thorough grip of the facts, has in his hand the most powerful weapon to fight his adversary with. After the facts have been gathered the first thing that most pressingly demands the lawyer's attention is the record. He should, at the outset, ascertain if the documents of his adversary were filed within the time allowed by the Court for the purpose. The reason for this inspection is obvious, as unregistered documents, filed out of time, are liable to be rejected by the Court as being suspicious. Hence, objection on this ground, taken at the inception of the case often stand the client in good stead, as they may ultimately result in the rejection of the documents to the great disadvantage of the other party. What the pleader should do, after these preliminaries, is to subject the documents (specially the unregistered ones) to the closest scrutiny with a view to finding out such circumstances as are likely to create suspicion in the mind of the Court. Thus scratches or erasures at material parts of a document, found out in the course of inspection, and pointed out to the Court and the witness who comes to prove it, may go a great way in discrediting the document, similarly the stitching of a *cheque book* may, to a discerning eye, afford ample materials for suspicions that it has been interleaved and re stitched with forged counterfoils for creating evidence. It often happens that account books are filed by a party and used as evidence. The pleader in such a case should study the accounts carefully and it is not unlikely that he would be able to find out suspicious and bogous entries, here and there, or to his astonishment, he may find th

entries in the day-book (*Jabda*) do not tally with the corresponding entries in the *Khatain* or ledger; or that balances in the day-book at places have been inaccurately struck. These, and like materials obtained from a searching perusal of the records, will not only be of incalculable assistance to the pleader for the purpose of cross-examining the witnesses who come forward to prove them but help him a great deal in furthering his clients's cause.

Memorandum of evidences to be taken by the cross-examining pleader.

Unless gifted with a prodigious memory which refuses to forget anything it once registers, the pleader who desires to cross-examine should take down a faithful and close memorandum of the deposition, as the examination-in-chief goes on, marking the important points. This will be of immense help to him at the time of cross-examination. He should note down particularly those points which his client does not admit, and never allow any one of them to escape unchallenged in cross-examination. Of course, on points which his client neither admits nor denies, the cross-examination need not necessarily be long, and they may be simply touched on in passing.

Treatment with witnesses.

While cross-examining a witness, efforts should be made to be as polite as possible. The 'questions' should be clearly framed. The feeling of the witness should not unnecessarily be offended by using insulting expressions. Age has to be respected, and an old person of position, simply because he happens to be in the witness-box, should not lose his due share of courtesy as a gentleman. Witnesses who come

determined to support a party will do that, and the cross-examining pleader will find that they are generally prepared with the answers to questions likely to be put to them in cross examination. While cross examining witnesses of the latter class the cross examining pleader will try to get at the motive or intention or interest which has induced them to depose in favour of one side. There are witnesses who have no means of livelihood other than acting as touts in Courts fomenting litigation and deposing whenever necessary for one party or other on receipt of remuneration. These witnesses often overact their part. To witnesses of this class a stubborn attitude should be assumed and every possible attempt should be made to expose them and their real worth. There is another class of witnesses besides those mentioned above who do not belong to any party but come to depose to facts as known to them at the request or entreaties of persons who cite them. To witnesses of this last category the cross examining pleader should be all respectful and in case of any doubt attempt should be made to ascertain whether the witness on account of lapse of time or loss of memory or defective observation innocently made incorrect statements before the Court.

Necessity of studying law for cross examination

A thorough knowledge of law on the subject involved in a particular case under trial is imperative to enable a practitioner to do justice to his client's cause by carefully cross examining his adversary's witnesses. I would illustrate the above proposition by concrete instances. Take for example—that a witness has proved a certified copy of a document by

saying that the original is lost. The cross-examining pleader should remember that, if he can elicit in cross-examination that the document is not really missing and that it could be produced by the party by exercise due diligence, then the certified copy attempted to be proved will be rejected by Court under section 65 of the Evidence Act. Besides, if it is shown in cross-examination, that the original document was not called for from the proper party, its certified copy attempted to be proved in examination-in-chief would be rejected under the law; because until a party has exhausted all the means prescribed by law for compelling a person to produce a document known to be in his possession, and so long as the original is procurable or its loss is not satisfactorily accounted for, secondary evidence cannot be admitted (1). In this connection, it must also be remembered, that a defendant who does not object to the admission of secondary evidence at the time when it is admitted, cannot be allowed to raise any objection about the admissibility of the document in appeal (2). So it is the primary duty of the cross-examining pleader to raise an objection at the time an inadmissible document is going to be marked as an Exhibit (as proved) in the case. To prove the execution of a document of which a copy is on the record, it is not enough for the witness to depose that he saw an original document of that nature but that the law requires that the purport of the copy must be read over to the witness and he should be asked whether the original of the document was same as that which had just been read over to him (3). So a pleader who would prove a certified copy must

(1) 1 Weekly Reporter 145. (2) 22 W. R. 232. (3) 13 W. R. 429.

be careful at the outset to conform to the above procedure, otherwise the document may run the risk of being rejected in appeal, even if it be accepted as evidence in the primary Court. So it is clear that unless the pleader who is cross-examining any witness is thoroughly acquainted with the law on the point he cannot do justice to his client during the trial of the case

CHAPTER II.

Some Practical Hints for Cross-examination.

Evidence to be direct.

All facts except contents of documents may under the Evidence Act, be proved by oral evidence. Oral evidence, however, has to be considered by Courts in conjunction with the documentary proof on the record, and the probability arising from all the surrounding circumstances of the case. In fact, the Courts have to consider the full force and the joint result of all the evidence, direct or presumptive, upon a particular point. It has been pointed out by their Lordships of the Privy Council that oral evidence is ordinarily looked upon with great suspicion and that such evidence when opposed by the strong improbabilities of the transaction to which it relates, or is weakened by the mode in which it is given, may prove of little avail (1) * in our Courts of Justice. It has also been pointed out by the Privy Council that oral evidence should receive its due weight and is not to be rejected from a general distrust of oral testimony, in absence of some cogent reasons to discard the

* (1) 4 M. L. A. 441. (2) 11 M. L. A. 28.

evidence. Oral evidence adduced before the Court must, in all cases, be direct. The law on the subject has been laid down in the Indian Evidence Act. The foundation of the rule lies much deeper. Instead of stating as a maxim that law requires all evidence to be given on oath, we should say that the law requires all evidence to be given under personal responsibility, *i.e.*, every witness must give his testimony under such circumstances as expose him to all the penalties of falsehood that may be inflicted. The true principle, therefore, as laid down by Best in his *Law of Evidence* (*vide* 8th Edition, Page 435) is that all second-hand evidence, whether of the contents of a document or of the language of a third person, which is not connected by responsible testimony with the party against whom it is offered, is to be rejected. Hearsay evidence is rejected, because it is not given on an oath, because it cannot be tested by a process of cross-examination, because it implies that some better testimony might be available, and because it has a tendency to protract litigation to an embarrassing length; and lastly because it is intrinsically weak.

Testing of evidence with a view to find out if is direct.

In a title suit, in a suit for recovery of possession of land under the summary procedure prescribed in section 9 of the Indian Specific Relief Act, in a claim case, in a rent suit where it is alleged that defendant could not get possession of the lane of his *jama*, and in various other cases tried in Civil Courts, evidence of possession is adduced by both parties. This evidence may either be oral or documentary; *kobala*.

Labuliyats entries in the record-of rights and the like, in respect of disputed land, are put in for showing possession of the land. Besides, witnesses are examined who speak about possession of the land by either party. I shall shew later on, how to cross-examine witnesses who prove documents in respect of the property in dispute. Here I shall only say a few words about the cross-examination of the witnesses who prove in examination in chief, possession of any of the parties. To such witnesses the cross examining pleader should ask whether he knows the land. If the witness answers in the affirmative he should be asked to give boundaries of the property in question. The witness may give some boundaries and the pleader has to verify them with reference to the record. It will be seen that many witnesses will not be able to give correct boundaries on four sides. If it is suspected that the witness does not really know the land or has but some hazy notion about it and its location, and that he has somehow been coached to give the boundaries alone, the knowledge of the witness regarding lands on the boundaries of the disputed land may be tested and the witness should be required to give boundaries of the land, say on the North or on the South of the property in suit. If the witness fails to give correct boundaries of the said lands, or if he cannot give any boundary, it may be argued, later on, that the witness's knowledge of the locality is too vague to be first hand. Then even if the witness know the land, the should test the knowledge of the witness by questions as to what led him to see possession of the land almost every year.

by him in examination-in-chief. With this end in view the witness may be asked if he has land close by; if not, what led him to go to the field so often? Some witnesses, of the lowest class, who even though they have no land close by, will be bold enough to say that they have lands at a distance of a few *bighas* from the land in dispute. If your instructions be that statements are incorrect, ask the witness to give boundaries of his land, *dag* number of his plot in the settlement *Lhatian*, the rent payable by him, the name of his landlord and and so forth. It will have to be ascertained from cross-examination of other witnesses, if those statements have any foundation. Then a witness may be an old one who has somehow formed an impression about the possession of the land but not actually seen any man possess or cultivate the land as he could not have possibly gone out due to decrepitude of age, even though it is possible that he has land adjacent to the land in suit. To such, a witness the pleader should ask whether he can stir out of doors and suggest if some junior member of the family looks after his properties and cultivation. If it transpire that the old man has not been to the field, say for the last 10 years, his evidence of possession for the said period will be at best hearsay, and consequently, of no value. Similarly, the evidence of a person who ordinarily stays out of his village will be of no great value and cross-examination may be directed in this line.

**Cross-examination of witnesses who
prove documents.**

To a witness who proves a document, questions should be asked with a view to ascertain if he was

present at the time of execution or if he signed the document afterwards at the request of any particular person. Attempts should be made to get details of the transaction covered by the document to test his knowledge. It may appear that though the witness knows nothing about the transaction still his name appears as a witness in the document. It may be that the witness turned up after the transaction was closed and the document executed. If the document be a mortgage bond or a *kobala*, the witness may be asked as to who supplied the boundaries and who wrote the document, either the scribe wrote it himself or at some body's dictation, and who were present at the time and in which order they came and if any body was sent for or chanced to be present accidentally. Similar and other questions according to the circumstances of the case may be put to other witnesses if necessary. This matter will be dealt with in a separate chapter under the cross examination of witnesses who prove mortgage and other bonds.

NB—For further particulars as to cross-examinations of witnesses in connection with suspected documents—Read Chapter VII of this part.

CHAPTER III.

Cross-examination on the Probabilities of a case.

It is the duty of every cross examining pleader to get such facts and circumstances by cross examination of his adversary's witnesses, as will make the case set up by his client very probable. Suppose in an easement suit, the plaintiff's pleader gets

defendant's witnesses that there is no other pathway excepting the one in suit for approaching the public road from defendant's house—then this circumstance alone will tend to shew that plaintiff's case is true. In a suit by a reversioner to set aside a sale by a Hindu widow, if the plaintiff's pleader can get from defendant's witnesses that the widow's husband had no debts at the time of his death and that the property left by the deceased yields an income sufficient to meet the ordinary necessities of a Hindu widow, then the plaintiff's case that there was no legal necessity for the sale, will be undoubtedly strengthened. In a bond suit, in which defendant denies passing of the consideration money, if plaintiff's pleader can elicit from defendant's witnesses that at or about the time of the bond, defendant was in need of money for defraying the expenses of his daughter's marriage and the like, that will go a great way to support plaintiff's story. In a partition suit where a defendant sets up a previous partition by metes and bounds in his defence, if the defendant's pleader can obtain from plaintiff's witness that the parties are in exclusive possession of specific properties from a very long time, this will be a circumstance much in defendant's favour. In a pauper case, if the opposite party's pleader can ascertain from petitioner's witnesses that the petitioner inherited some properties from some distant relations which are not mentioned in the schedule annexed to the petition, the petition stands the chance of being rejected, though the petitioner may disclaim any interest in such properties. In a suit for restitution of conjugal rights where the defence is that the

plaintiff habitually ill treats the defendant, if it can be shewn by cross examination of plaintiff's witness that plaintiff is a man of violent temper, that may to some extent help the defence. Instances may be multiplied and it will be for the cross examining pleader, in the circumstances of each case, to try to ascertain such facts and circumstances from the opposite side which will strengthen his client's interest.

N.B.—In the following chapters I shall deal with some specific cases and show how cross-examination of witnesses may be conducted. The hints given, however, do not profess either to be exhaustive or to meet all contingencies; but it can be fairly expected that these hints will be found useful by junior practitioners at the beginning of their career.

CHAPTER IV

Cross-examination in Rent suit.

In a rent suit, the defendant may admit the *jama* and plead payment, or he may deny the *jama* in full, and say that the relationship of landlord and tenant does not exist between him and plaintiff in respect of the *jama* in suit. The defendant may as well say that the *jama* is of a lesser amount than that claimed by plaintiff.

If the defendant simply pleads payment the cross-examination of the witnesses will be on the lines as in all cases of plea of payment dealt with in the next chapter.

If the defendant denies the *jama* or the amount of the *jama*, plaintiff will

collection papers to show that he realised rent of the *jama* in suit from defendant. There may be evidence as well to prove settlement of the *jama* with the defendant. The plaintiff's *Gomasta* will generally prove the collection papers and speak about realisation of rent. There are cases where plaintiff's *Gomasta* also tries to prove the defendant's signatures in counterfoils of *dakhilas* to show that the defendant got *dakhilas* from the very counter-parts, on payment of rent in respect of the *jama* in suit. The defendant, if he denies the *jama*, will say so in his evidence, or where the amount of the *jama* is disputed he may produce *dakhilas* in respect of the admitted *jama* alleged to have been granted by or on behalf of plaintiff or his predecessors-in-interest.

**Cross-examination of the *Gomasta* who will prove
collection papers and realisation of rent or
settlement of the *jama* with
the defendant.**

The *Gomasta* may be an old one who may speak about settlement of rent and realisation of rent from defendant for a pretty long period, or he may be a newly appointed one who will simply prove the collection papers in the handwriting of his predecessors. The questions given below may be asked in cross-examination with advantage, according to the circumstances of the case.

Questions

(a) How long have you been in plaintiff's service? When was the *jama* in suit created? (It may be that the *Gomasta* is a new man who entered the plaintiff's service long after the creation of the *jama*.)

(b) Are the collection papers all in your handwriting ? If not—name the *Gomastas* in whose handwriting the papers are and the periods for which they were in plaintiff's service (If the old *Gomastas* are not examined, ask the witness if those *Gomastas* are alive and their respective addresses)

(c) Did you collect rent of the *jama* from defendant ? If so on how many occasions ?

(c) Can you give the approximate dates and the sums you from time to time realised from the defendant ? [If he gives particulars try to compare them with the respective entries in the collection papers]

(d) Did any witness see you collect rent from the defendant ? If so, when and how much ?

(e) Do you collect rent personally or through your *Paikes* ?

(f) Do you grant *dakhilas* immediately after collection and enter the sums realised in the *shehas* and *korchas* ?

(g) Do you submit annual accounts of collection of rent to plaintiff ?

(h) Were you "dismissed" by your previous master for defalcation of money ?

(i) In how many cases did you depose up to this time ?

If the witness has proved defendant's alleged signatures in counterfoils then ask him the following questions.

Questions.

(1) Do you take signatures of all tenants on counterfoils ? If not, what was the special

for your getting defendant's signatures on the counterfoils ?

(ii) Did you suspect at the time of granting *dakhila* that the defendant might deny or dispute the *jama* afterwards ?

(iii) Did your predecessors take any such signatures on the counterfoils ?

(iv) Is it not a fact that defendant is a man of substance and generally sends rent through his agent ?

(v) Was any Road Cess return filed by plaintiff in the Collectorate ? If so, when ? Was the defendant's *jama* mentioned in the said return ?

N. B.—[If the defendant has filed *dakhilas* in respect of a lesser *jama* admitted by him—show those *dakhilas* to the witness and ask him if those were granted from the plaintiff's *sherista*]

If there was Settlement operation in the locality and the record-of-rights was finally published and if the entries in record-of-right supports defendant's case, a copy of the same should be filed on defendant's side so that there may be a strong presumption in favour of defendant's case. The plaintiff's *Gomasta* may be asked if he is aware of the finally published record-of-rights and what *jama*, if any, was recorded in the Settlement papers in the defendant's name ?

If the witness has proved creation of the *jama* the following questions may be put in cross-examination

Questions.

(a) Who held the lands of the *jama* before defendant ? What was his *jama* ?

(b) Why did he surrender the lands ? (Was it because he could not get possession ?)

(c) Do you know the lands? Can you give the areas of the plots and their respective boundaries?

(d) Have you seen defendant possess the plots? If so when? What was the occasion for your going there?

(e) How many tenants have you in the *Mahal*? Are all of them and their lands known to you? If not, why did you take particular notice of defendant's lands?

(f) Is it not a fact that one A is possessing the land under one B?

(g) Was there any title suit in respect of the lands between plaintiff and B? Did you not depose in that case? Was not that suit decided against plaintiff?

(h) Was any *Kabuliyat* taken from defendant in respect of the *jama* in suit? If not, why not? (If the witness says that the defendant executed an unregistered *Kabuliyat* then ask the witness why was not the *Kabuliyat* registered?)

(i) Does the defendant hold other *jamas* under the plaintiff? Is he not paying rents of those *jamas* regularly? Can you assign any reason for defendant's denying the *jama* in suit which is for a small amount?

(j) What objections are there for plaintiff's taking a decree against the holding in arrears without making defendant personally liable for the amount?

(k) Who were present at the time of settlement of the *jama*? Are not these men plaintiff's servants, debtors and tenants?

These and similar questions have to be according to the defence set up. The questions

for your getting defendant's signatures on the counterfoils ?

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(iii) Did your predecessors take any such signatures on the counterfoils ?

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speak for themselves. As the witnesses go on answering the questions other questions will automatically suggest to the cross examining pleader and they will have to be put, to get further light on the subject under cross-examination.

CHAPTER V.

Cross-examination regarding plea of payment.

In rent, money, mortgage and other suits, defendants frequently plead payment in full or in part. In such a case, the onus of proving payment falls upon the defendant who adduces evidence in support of his plea. In mortgage suits and in suits based on bonds and hand-notes, it will be seen that the payments made by debtors are generally entered on the back of documents by the plaintiff's side to evidence payments made. But there may be cases where such payments, though actually made by debtors were not entered by the creditors, either through oversight, or mistake, or as the document was not available at the time of payment, or as the parties were on terms of active confidence the debtor did not press for the entry of the payments. It very frequently happens that debtors take false pleas of payment to avoid their liabilities and to prolong the litigation with a view to defer payment of sums that may be decreed against them. In rent suits, tenants (defendants) very often plead payment but fail to produce receipts or *dakhils* in support of their allegations. Most of these payments are seldom proved, but there are cases where unscrupulous *Gomastas*, or agents of landlords, misappropriate poor tenants' monies received by them, in active confidence, without granting them

formal receipts or without entering them in their masters' account books

In money and mortgage suits the debtor defendants ordinarily give their evidence and examine witnesses to corroborate their statements. A pleader, appearing for the plaintiff, should try to get from the defendant and his witnesses, by suitable questions in cross examination, the particulars suggested below —

Questions

(a) When *i.e.*, in which year, month or date the alleged payment was made?

(b) Who were the persons present at the time of such payment?

(c) How did the witnesses happen to be present at the time of payment and in which order they came?

(d) Whether any account was taken of the liabilities of the defendant debtor at the time of payment? If so, who adjusted the account and if the bond was produced at that time?

(e) How did the defendant debtor raise the amount? (Here try to get hold of the particulars of the same) [If the instructions be that the defendant debtor was then in involved circumstances, try to put questions suggesting the same to the witness]

(f) What was the reason for the alleged payment not being entered on the back of the document?

(g) [Try to ascertain if the witnesses who are going to be examined by defendant are in any way interested in defendant's cause and ask the defendant if his witnesses are his relations, debtors, party-men

(3) If so, how was the difficulty overcome? [Here get the full particulars of the defendant's liabilities at the time from your client, and in case the defendant denies his liability, put him point blank the name of the person who pressed him hard for money at that time. In case defendant had satisfied a decree by taking money from your client, file a copy of the decree and the order of satisfaction to shew that at or about the time of the execution of the mortgage bond in suit defendant had made payments to his decree holder. If defendant made any payment to any respectable firm—call for the account books of that firm and confront the defendant by putting to him the number of the G C notes etc he had received from the plaintiff and paid to that firm.]

As a matter of practice every mortgagee gets men of his camp as witnesses to the mortgage bond and so plaintiff's pleader will be able to shew, by examining witnesses of the bond that consideration money had in fact been paid at the time of the execution of the bond. To strengthen this position the defendant may be asked if the persons who attested the bond as witnesses were present in the *Majlish* of the bond.

(II) Want of attestation

This is a legal defence. The plaintiff's pleader will have to ask his witnesses how the bond was executed and at what stage the witnesses signed the bond, and he can easily expect them to say that they saw defendant execute the bond and that they signed their names after execution. It would be the duty of the defendant's pleader to elicit in **cross-examination**—(1) if the defendant had signed the particular place and the part see sign

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(f) What was the reason for the alleged payment not being entered on the back of the document?

(g) [Try to ascertain if the witnesses who are going to be examined by defendant are in any way interested in defendant's cause and ask the defendant if his witnesses are his relations, debtors, party-men

tenants, servants and the like Also try to ascertain the social status of those witnesses]

After cross-examining the defendant on the above lines and getting answers favourable or otherwise similar questions should be put to the other witnesses, not exactly in the same order or manner as in the case of the defendant, but in a varied way keeping the aforesaid points and other points that may appear to be material in view It is not unlikely that witnesses will make discrepant statements on material points, *e g*, payment of money, the mode of raising thereof production of the document or accounting or non-accounting at the time of the alleged payment

It may as well transpire that some witnesses are highly interested, and as such their testimony is of of little value, and that others are professional witnesses who deposed in lots of similar cases and so on In rent suits, where defendant pleads payment, the pleader appearing for defendant may try to shew by cross examination that the *Gomasta* misappropriated money of other tenants or that the landlord, in his attempt to enhance rent illegally, was putting indirect pressure upon the tenants of the *mahal* by withholding *dakhilas* even in respect of genuine payments

A pleader appearing for defendant in a mortgage or money suit will do well to get from plaintiff and his witnesses informations as to whether the plaintiff keeps regular accounts, and if so, why those books have not been produced According to circumstances, any ill felling between the parties that might have cropped up after the alleged payment may be attempted to be elicited If plaintiff's books of account had been discredited in any other case, that may as well be suggested

CHAPTER VI.

Cross-examination in a mortgage suit.

In a mortgage suit the defence generally consists of—

(1) Non passing of consideration money

(2) Want of attestation.

(3) Plea of payment in cash or kind

(4) In case of a mortgage by conditional sale, questions may arise as to whether a document purporting to be an out and out sale, is really a deed of sale, or a mortgage by conditional sale

(5) In case of a usufructuary mortgage bond, the mortgagee is generally put in possession of land, and questions may arise in a suit on the mortgage bond whether the mortgagee was in possession of the property at any time after the execution of the bond

Now I shall deal with the above points *serialim*

(1) Non-passing of consideration money

If the defendant admits execution of the document but denies passing of consideration, the onus *would* be upon him to establish that he did not ~~get~~ the money, though he executed the bond; and ~~he~~ will say so in the witness box In cross-exam-~~ing~~ the defendant, questions on the following ~~lines may~~ be put —

Questions.

(1) What was the necessity for your ~~executing~~ this bond?

(2) Had you any pecuniary difficulty ~~at the~~ or which you wanted to borrow money?

(3) If so, how was the difficulty overcome? [Here get the full particulars of the defendant's liabilities at the time from your client, and in case the defendant denies his liability, put him point blank the name of the person who pressed him hard for money at that time. In case defendant had satisfied a decree by taking money from your client file a copy of the decree and the order of satisfaction to shew that at or about the time of the execution of the mortgage bond in suit defendant had made payments to his decree holder. If defendant made any payment to any respectable firm—call for the account books of that firm and confront the defendant by putting to him the number of the G C notes etc he had received from the plaintiff and paid to that firm.]

As a matter of practice every mortgagee gets men of his camp as witnesses to the mortgage bond and so plaintiff's pleader will be able to shew by examining witnesses of the bond that consideration money had in fact been paid at the time of the execution of the bond. To strengthen this position the defendant may be asked if the persons who attested the bond as witnesses were present in the *Majlish* of the bond.

(II) Want of attestation

This is a legal defence. The plaintiff's pleader will have to ask his witnesses how the bond was executed and at what stage the witnesses signed the bond and he can easily expect them to say that they saw defendant execute the bond and that they signed their names after execution. It would be the duty of the defendant's pleader to elicit in cross examination—(1) if the defendant had signed the bond at a particular place and the witnesses signed their names as

witnesses at different places and at different times in *defendant's absence*. If the pleader succeeds in proving this, his point is won, and he can argue that as the bond was not legally attested, plaintiff has no lien over the mortgage property, and that if the suit be within six years from the time of payment mentioned in the bond, plaintiff would get, at best, a simple money decree against the defendant, and the pleader can ask the Court to allow instalments, spreading over a number of years, according to defendant's circumstances, to satisfy the decree. It should be mentioned here that in a mortgage suit the Court has no power to grant instalments, and that the Court at best can allow six months time (the full period of grace) to defendant for satisfaction of the decree*.

(2) If plaintiff's pleader find in cross-examination that the defendant and the attesting witnesses were present in the *maylish* of the bond it would be his duty to get from the witnesses the order in which the defendant and the witnesses signed the bond. He can ask the scribe if he had signed the bond just after writing it out and then made it over to defendant for execution. The pleader should know that in case of an illiterate executant whose name is signed by the scribe, the scribe cannot be an attesting witness, and if he find in the bond only one witness and the scribe, his point is gained even if the bond were executed in presence of the sole witness. He can argue that there was no attestation of the bond according to law. The pleader should read the law on the subject in Part VI of this book and note the points and begin to cross examine keeping

* Note the recent amendment of the law relating to attestation of a mortgage bond given at pp 453

those points in view. Random cross examination is worse than useless and it does no good beyond taking away the Court's time for nothing

(III) For cross-examination regarding plea of payment—read Chapter V of this Part

(IV) For ascertaining whether the deed was one for out and out sale or for mortgage, the pleader should try to ascertain the intention of the parties at the time of the transaction and their subsequent conduct. *Intention of the parties at the time of the deed determines the character of the transaction*

(V) For cross-examination regarding possession of mortgaged property—read Chapter II of this Part

CHAPTER VII.

Cross-examination of a witness who is supposed to have proved a forged document.

Under this head can be classed cases like the following —

(A) Where the witness has proved the bond on which the suit is based and has said that he was present at the time of the execution of the document

(B) Where the witness has proved the hand-writing of the scribe and the signature of the alleged executant, but did not depose about the fact of actual execution

(C) Where an old document has been produced and its custody proved by the witness and the witness has also proved the hand-writing of the document

I shall deal with these cases one after another :—

(A) If the suit be on an unregistered bond and if it be denied by defendant, his pleader may cross-examine

the scribe who may prove the bond by putting questions like those given below. Of course, questions will vary according to the circumstances of each case and the defence set up

(1) What is your means of livelihood ? How much do you earn a month ? How many documents do you ordinarily write every month ?

(2) Can you remember particulars of all the documents written by you ? Were you known to defendant from before ? Or did you see him for the first time at the time of execution of the bond ?

(3) What special reasons are there for your remembering the details of the document in question ?

(4) How far is the Registration office from the place of the alleged execution of the document ?

(5) Why was not the document registered ?

(6) Why did defendant borrow money by executing the disputed document ?

(7) Is it not a fact that the defendant is himself a money-lender ?

(8) Did not the defendant purchase a property for a much larger sum at or about the time of the alleged execution of the document ?

(9) Is there any party feeling in the village ? Do you belong to the plaintiff's party ?

(10) Is it not a fact that the plaintiff and the defendant have not been on speaking terms from a long time ?

(11) Are not the witnesses to the bond all men of plaintiff's camp, being his relations, debtor and the like ?

(12) Did not the plaintiff promise to wreak a vengeance upon the defendant at the time of

Then comes the defendant's signature, ask the witness—

(vi) Did you see defendant sign his name before? If so, when and where? Hand over to the witness admitted signature, of the defendant and the alleged an disputed signature suggesting the differences you notice [*If there is any difference in spelling, first ask the witness to give the ordinary spelling of defendant's name as spelt by him*]

(C) In this case the witness might have proved custody of a document over 30 years old and possibly the hand writing of the scribe and the signature of a deceased executant **Re—Custody ask—**

(1) When did you last see that document? How many times in all did you see the document?

(2) Was the document made over by plaintiff's father to plaintiff in your presence? If so, what was the occasion?

(3) On what previous occasions had you any necessity of seeing the document? Did you at that time read the document in full or see it from a distance?

(4) How do you identify the document to be the one you say you saw?

(5) Is it not a fact that after plaintiff's father's death his house was searched by the Police in connection with a theft case? Was not a list of documents then made? Did the Police make any list of documents and was the document in question included therein?

(6) Did you depose in any other case on behalf of the plaintiff?

(7) Is it not a fact that the land covered by the document was entered in defendant's father's name in the last Settlement? Did you not then depose before the Settlement Officer?

[*N B*—Examine the document carefully and suggest to the witness that in the folding portions of the document there is no writing and if this does not appear to him to be strange If you notice that in portions of the document ink has soaked—ask the witness if he sees indications of ink soaking in those portions In this connection the pleader should consult Stamp and Registration law and ascertain if the document had been written on a properly stamped paper and if its registration was then compulsory Forged documents may be drawn up on any stamp which a party can lay hold of and an ordinary forger innocent of old stamp law may put in as consideration in the deed at random for which the stamp on which the document is written may be either insufficient or excessive Instances have happened in which a Hindu forger while forging a document alleged to have been written by a Mahomedan scribe, put in the name of a Hindu deity (as he does in other documents written by him) at the top of the document, thus indicating that the deed was unquestionably forged Every suspicious document should therefore be very carefully scrutinized by the cross examining pleader before he begins his work of cross examination Ordinarily documents are forged by giving false dates and purporting to have been written by a deceased but recognised scribe of the village. So try to get hold of genuine documents in the hand-writing of the said scribe and compare the spellings and the

peculiar features of his hand-writing with those in the disputed documents. These hints if carefully followed would lead to satisfactory results.

For cross examination regarding the signature of the alleged executant consult the questions given in case (A)

CHAPTER VIII.

Cross-examination of a Commissioner appointed by Court to hold local investigation in a title suit where both plaintiff and defendant claim the disputed land as falling within their respective boundaries.

The Commissioner in such a case is directed by the Court to relay some established map, *e g*, a Thak map or a Revenue Survey map or a Settlement map, or a partition map and to report after a local investigation whether the land in suit falls within the plaintiff's or the defendant's *Mouza* or boundary limit. The Commissioner's report may be entirely in favour of the plaintiff, or the defendant, or partly in favour of both. The party who is dissatisfied with the Commissioner's report may summon the Commissioner and cross-examine him with a view to show that his report is not correct and that it cannot be accepted by the Court.

The following hints for cross examination of the Commissioners may be found useful.

Hints

If the Commissioner is not an expert, his knowledge of survey may be tested by putting questions like these—(a) Did you pass any prescribed Survey

Examination? How many Commissions did you execute? Were your reports challenged in other cases? If so, with what results? If it is suspected that the Commissioner did not work personally, direct your cross examination to that point beginning with—(a) (1) Did you take any surveyor with you? (2) Did you personally write the field book? (3) Did you yourself plot from the field book?

The most important point would be to get from the Commissioner how he fixed the starting point to begin his work with. Unless a fixed starting point mentioned in the map be correctly located in the spot, the whole work will be absolutely inaccurate. So the cross examining pleader should ask the Commissioner as to how he fixed the starting point. In case the starting point pointed out by the party in the locality, had been rejected by the Commissioner—ask the Commissioner the reasons which led him not to accept the point. The Commissioner would invariably assign some reason for choosing his own starting point. The pleader should ascertain from his client the main grounds on which the starting point accepted by the Commissioner can be shewn to be inaccurate. Then those grounds should be put to the Commissioner and he should be asked if he had considered those points and if by a lapse of time configurations in the locality can change materially and may not agree with those shown in the maps. [Most of the Commissioners try to support their reports by saying that he accepted the particular point as starting point as the configurations of the locality agreed with the map.]

Unless the starting point be a fixed pillar or a corner of a house, or a temple, or a permanent landmark,

the cross-examination would be directed towards eliciting if the point fixed by the Commissioner might not be removed a few cubits in a direction favourable to the party challenging the report. Suppose a tank is shown in the map, and it was identified in the locality by its peculiar name, and the Commissioner started from one of the corners of the said tank as his starting-point for relaying the map, then the Commissioner should be asked if the bank of the tank had given way, or the tank itself silted up and thus the corner of the tank had been removed from its old site to some other point. In a boundary dispute, where the subject-matter of litigation is a small strip of land, removal of the starting point by one cubit even might give a very different aspect to the case.

If you suspect that the Commissioner did not plot the field book honestly then engage a surveyor and have the field book plotted by him, compare the Commissioner's plan with that of the surveyor's, and the cross-examination should be directed on the differences noticed. Suppose, the pleader finds that at a particular point in the Commissioner's map the bearing is 350° and that the corresponding bearing in the field book is 320° . Then the map and a protractor should be handed over to the Commissioner for reading the bearing from the map. The Commissioner will do so, and the result will not agree with the field book, and the pleader will gain his point.

If the cross-examining pleader finds that at a particular station there is a metallic shed, *e.g.*, a corrugated iron roofed shed close by, then by metallic influence the compass must have recorded a wrong bearing. In such a case, the Commissioner may be asked as to how he did manage to ascertain the

magnetic variation in the reading of the compass. If the Commissioner had not found the correct bearing by applying back bearing test, his field book and report will count for nothing. By back bearing test is meant the test of reading the bearing of a point under metallic influence, from a point absolutely free from such an influence. If the two points A and B be free from metallic influence then the bearing from A to B and the bearing from B to A will give a clear difference of 180° . But suppose B was under metallic influence then this difference would be either over or below 180° . Every Commissioner is bound to make allowance for the said difference at the time of survey.

In case the map handed over to the Commissioner had been drawn on a plane table, then the bearing of any particular point in the locality, as shewn in the Commissioner's map, may not agree with the standard map. The fact is that in a plane-table survey the north line is often put in by guess. In such a case the Commissioner should be asked whether in plane-table survey the north line is not always accurate. The Commissioner will not venture to deny this.

Needless to add that unless a pleader has some knowledge of survey he will not be able to detect the defects in the Commissioner's map and report. So it will be advisable for a junior practitioner to pick up some knowledge of survey if he wants to do justice to his client's cause in cases requiring knowledge of survey.

CHAPTER IX

Cross-examination in a damage suit for malicious prosecution.

This suit is brought by an accused after he is acquitted in a criminal case started against him by the defendant

The plaintiff in such a case has to prove that he was *innocent of the charge, and that he was declared innocent by the trying Court*. He has, besides, to prove that the prosecution was started by defendant in a malicious spirit, and that he had no reasonable and probable cause for doing it, and that the ends of justice did not require his prosecution

He has further to prove that he has been lowered down in the public estimation, and that he has sustained mental injury, and that he had to spend a specified amount in defending himself in the Criminal Court. These are necessary to enable the Court to estimate the damage the plaintiff would be entitled to get in case of his success, from the defendant. The plaintiff's social position is also considered by the Court in awarding compensation

The pleader who will appear for defendant in such a case will try to shew that plaintiff was really *guilty of the charge and that, plaintiff's antecedents are not good, and that the Criminal Court failed to appreciate the evidence produced by defendant (for the prosecution) in the criminal case*. He may cross-examine the plaintiff on the following lines —

Questions to the plaintiff :—

(a) What is your position in life ?

(b) What is your income ? How many members have you to maintain ?

(c) Were you not suspected in connection with the theft at the house of X ? Were you not sent up in that case and convicted by the first Court and acquitted in appeal on a technical question of law ?

If the theft was of paddy from the defendant's land contiguous to plaintiff's, and if there was ill feeling between the parties regarding boundary dispute, or on any other ground, the following question may be asked to plaintiff's witness —

(i) Is there any *ail* demarcating the plaintiff's land from that of the defendant ? (This will be necessary to show that plaintiff could not have taken paddy from defendant's land through oversight or mistake)

(ii) Was not the paddy grown by defendant on plaintiff's land ?

The following questions may be put to plaintiff in mitigation of damages claimed on account of cost of defending the criminal case

(a) What sum did you pay to your mukhtear for your bail ? What is the charge usually made by the mukhtear ?

(b) Did you engage any pleader to defend you ? Do you hold any receipt for any amount paid to any pleader for your defence ?

(c) Is it not a fact that you were defended by a mukhtear whose charge varies from Rs 2 to 4 for appearing in a case ?

(d) Is it not a fact that the trial was finished in two days and that there were only two adjournments at your instance ?

(e) You say you had to spend about Rs 150 over your defence—but are you aware of the fact that such a petty case as yours may be defended at a cost of Rs 10 or so?

(f) Were you not given the benefit of the doubt by the Criminal Court?

(g) Were you not personally present when the paddy was reaped from the defendant's land? Did you not order your men to cut paddy from defendant's land inspite of protest from defendant's son? [These and questions of like nature, according to circumstances of each case, may be put to the plaintiff's witnesses as well]

In order to show that plaintiff is not entitled to any heavy sum on account of his alleged loss of reputation and mental injury, the cross examining pleader may as well ask plaintiff and his witnesses questions suggesting that the plaintiff is a man of no character, and that he has very little position in society, and that he is looked down upon by his neighbours and acquaintances, and that plaintiff in consequence can not claim anything above a nominal damage

N B—It should be noted that no suit lies for damages for malicious prosecution unless plaintiff had been summoned by the Criminal Court,—15 C W. N 917 Before conducting a case for malicious prosecution the case reported in 17 C W N 554 may be read with advantage Malice can be inferred if it can be proved that defendant complainant knew that the charge he was bringing against plaintiff was false. Read 12 C W N 1017. It should be borne in mind that the finding of the Criminal Court is not conclusive in a civil suit for damages

CHAPTER X.

Cross-examination in a case involving question of Benami.

In a title suit or in a claim case, questions may arise whether a particular person is a *benamdar* for another. Formerly it used to be a good defence in a title suit to say that the plaintiff was simply a *benamdar* for another man, but the law on the subject changed quite recently when their Lordships of the Privy Council held in the case reported in 33 C. L. J. 369 that a *benamdar* was entitled to prosecute a title or an ejectment suit and that the decree passed in such a case would bind the beneficial owner.

In a partition suit between co-sharers a question may arise as to whether a particular property, purchased in the name of one of the co-sharers is his personal property, or the joint property of all the co-sharers.

It frequently happens that judgment-debtors or persons in involved circumstances create *benami* deeds in favour of their relations and friends to protect their properties from being attached in execution of decrees passed or likely to be passed against them so that when the creditors seek to attach the properties, the *benamdar*s are put forward to claim the properties.

In these and like cases, the Courts have to decide whether the alleged *benami* transactions are genuine or collusive.

In a partition suit, the cross examining pleader who challenges the deeds will be required to test by cross-examination the real nature of the transactions. The source of purchase money, or payment thereof, is

generally the true criterion in coming to the conclusion (Read 21 C W N 385 and 28 C W N 62) Cross examination of the witnesses (who prove the transactions) on the lines indicated below may be found useful

Questions :

(a) Who paid the purchase money at the time of the purchase ?

(b) What is his position in life ? Has he any independent source of income ? Can he save anything after meeting his ordinary expenditure ? Has he any business of his own ? Does he keep regular accounts of his business ? Was the amount paid to the vendor entered in such accounts ?

(c) It is not a fact that the ostensible purchaser and his brothers were joint in mess and property at the time of the alleged purchase ?

(d) How was the property possessed after the purchase ?

(e) It is not a fact that the agent of the joint family caught fish from the tank or got fruits from the trees on the land in dispute ?

(f) It is not a fact that the father of the ostensible owner purchased other properties in the names of his other sons and these properties have all along been treated as the joint properties of the family ?

(g) It is not a fact that the father of the ostensible owner had some unsatisfied decrees hanging against him when the property in question was acquired ?

If the property was acquired in the name of some female member of the family, try to ascertain by

asking the witnesses—where did the lady get the fund from to purchase the property with? How did she exercise acts of possession over the property? Who used to look after her property? Are there any separate accounts in respect of her properties?

If in a claim case the decree-holder contends that the claimant is a mere *benamdar* for the judgment-debtor and the deed produced by the claimant is a collusive one, the witnesses of the claimant may be cross-examined by putting questions as noted below.

Questions :—

(i) How is the claimant related to the judgment-debtor? (If the claimant be judgment-debtor's wife, son or near relation, the Court will naturally look upon the transaction with some amount of suspicion). [It should be remembered however that mere suspicion is no evidence to prove a *benami* transaction, but that some tangible evidence will have to be adduced by the decree-holder to prove his allegation of *benami*—the onus of proving *benami* being on the person who alleges it. 23 C. W. N. 321: 25 C. W. N. 409 P. C. The determination of the question of *benami* depends, as pointed out by Sir Lawrence Jenkins in the Privy Council case of *Mina Kumari v. Bijoy Singh*, 21 C. W. N. 585, not merely upon direct oral evidence but also upon circumstances such as the source of the purchase money, the possession of the property, the custody of the title deeds, the adequacy of consideration and like facts.*]

(ii) What is the value of the property covered by the document? (Here suggest sales of similar properties in the locality by taking instructions from your

* Read in this connection 23 C. W. N. page 62.

client and if it can be shown that the property is a valuable one, and that the consideration mentioned in the *kobala* is quite inadequate this will be a good circumstantial evidence in showing that the transaction was otherwise than genuine)

Questions, regarding possession after the alleged transaction, as suggested below, may also be put to the witnesses

Questions .

(a) Who has been in possession of the land after the *kobala* ? Has the claimant his plough ? Is it not a fact that judgment debtor's sons ploughed the land with judgment debtor's plough quite recently and after the alleged transaction ?

(b) Is it not a fact that the crop of the land, after the transaction, was stored in the judgment debtor's house ?

(c) Can you give the names of the persons who hold lands on the boundaries of the land in question ? (This is to test the first hand knowledge of the witness regarding actual possession)

Note —Examine if possible some boundary men to prove judgment debtor's possession

N B —In a claim case, the Court will simply look to possession of the property at the time of attachment and may only incidentally goin to question of title with a view to determine such possession

Note —Property standing in the name of a person's wife is not necessarily *benami* property of the husband 2 C W N 367 For effect of property standing in the name of one member of a joint family read 21 C W N 280 and 15 C W N 321 Oral evidence is admissible to prove that in a particular suspected transaction there was no passing of consideration money 33 Ind Cts 396

CHAPTER XI.

Cross-examination of a Medical witness

In a lunacy case, in which a guardian is sought to be appointed for a lunatic in a proceeding under the Lunacy Act, or in a civil suit where a question arises whether a particular plaintiff or defendant is a lunatic or where the guardian of an alleged lunatic seeks to set aside a document said to have been executed by the said lunatic, the onus of proving lunacy of the person will be on him who asserts the same. Such a party would invariably examine doctors to prove that a particular man say A is a lunatic or that he was so at a particular time. For cross examining the medical witness you will be required to read Medical Jurisprudence bearing on lunacy and ascertain the following

- (i) The symptoms of lunacy .
- (ii) Method of examination .
- (iii) Observations necessary for the purposes of an examination .
- (iv) Possible lucid intervals in a lunatic's life and the like , Questions as follows may be put to the medical witness in cross examination —

(a) Did you pass any prescribed examination in medicine ? If so, when ?

(b) Did you make lunacy your special subject of study ?

(c) How many lunatics have you treated in your practice ?

(d) Were they all confirmed lunatics or simply suffering from monomania indicating symptoms of apprehended lunacy ?

(e) How many times did you visit the patient in question (*i e*, the person alleged to be a lunatic in the suit) ?

(f) Did you keep any diary noting the observations you made ?

(g) What are generally the recognised symptoms of a lunatic and in how many classes can lunatics be ordinarily divided ?

(h) In what class would you place the lunatic in question ?

(i) What are ordinarily supposed to be the causes of lunacy ? Did you try to ascertain why the patient became a lunatic ? Did you rely upon the statements made by interested persons who called you ?

(j) Was it possible for you to verify those statements ?

(k) Are you the family doctor of the patient ? Has the patient got any other family doctor ? Is not the party citing you as witness, a relation or a friend of yours ?

Questions on these lines should be framed and put to the witness as the necessity of the situation may call for

CHAPTER XII.

Cross-examination in a sale set aside case and in a case for setting aside an *ex-parte* decree.

In a case for setting aside a sale, the peon formally proves his return and some witness is examined to show that the processes had been a

served. A drummer is also examined to prove that drum was beaten at the time of service. Besides evidence is adduced by auction purchaser to show that the property was not sold at an inadequate price.

Cross-examination of peon by petitioner's pleader.
Questions.

(1) How long are you in service? (To show that he is a novice and has no correct idea of service)

(2) Do you remember how the service was effected?

[The peon will say that he has to serve numerous processes and that he does not remember the actual service. If the peon be bold enough to say that he remembers the mode of service, then he may be asked to the number of processes he has to serve every month (Just to show that it is impossible for him to remember the details)]

[The pleader should try to get hold of the peon's diary by calling it from the Nazarat and to get a copy of map of the locality, which is generally kept in Courts, and study the diary with reference to the map. In the diary, time of service of each process and distance of one station to another have to be noted by the peon. If the pleader finds that it was impossible for the peon to go to the alleged place of service on the particular day then the peon should be asked to state from his diary the number of miles he walked on that particular day—just to show that the peon's statement is something absurd.]

(3) 'When and where did you write your return?' (The peons are required to write their reports of service on the spot—but they seldom do it.)

Identifier or other witnesses.

In cross examination attempts should be made to ascertain—where did the peon meet the identifier and who gradually came and when the drummer was found—and if any bamboo stick was taken for affixing the sale proclamation on the land—and if the proclamation was read by the peon—and what the drummer did—and who came to the land on hearing the beat of drum and so forth. Witnesses may be asked to give the idea of the land—its boundaries, its route from a well known place—just to ascertain if they really know the land. In his attempt to get the above details from every witness the pleader may find palpable discrepancies in the various statements which will throw considerable doubt in the mind of the trying Court.

Questions may invariably be put with a view to ascertain why a particular witness has come to support the other side. The witnesses may be tenants, debtors relatives, etc., of the opposite party or some of them might bear grudge against the petitioner—[e.g. where the judgment debtor had any previous litigations with the witness and the like.]

Witnesses who prove valuation.

They may be asked—if they purchased or sold similar lands in the locality—if so, how much land and for what price and the nature of interest in the land sold in each case. Ask if these transactions were effected by registered documents, and if they can produce those documents in Court. If a witness says that he did not purchase or sell any land but that he witnessed similar transactions, then he may be asked if he became witness to the *kabalas* and

then to give the details of lands sold and prices thereof. Questions may be put about the quality of lands sold and about the quality of land in respect of which the proceeding has been started. In trying to get quality of land witness may be asked about its produce,—*e.g.*, if the land yields two or more crops a year, whether the land is overflowed in the rainy season to the detriment of the crops, the situation of the land, *e.g.*, whether it is by the road side or in the interior of the field and the like. If the land be garden land then ask—what kinds of trees are there on the land and if all these trees are fruit-bearing or if some of them are too old or too young (and in this way try to get an idea of the gross income of the land) rent payable to the *maliks* and the net profit from the land. Ordinarily 15 to 20 times the net profit will be the market price of the land if the tenant has permanent right in it.

Cross-examination by the pleader for the auction-purchaser or decree-holder.

His aim will be to show that the land was sold at an adequate price. He will besides have to ask the witnesses—who prove non-service of proclamation—whether they always remain at home or if they have to go abroad on business and about the respective distances of the land from their houses. Witnesses may also be asked if they ever saw any service of process.

Cross-examination of witnesses in a case under Order 9, Rule 13 of the C. P. Code for setting aside an *ex-parte* decree.

Where a defendant alleged that plaintiff got an *ex-parte* decree against him by suppression of summons.

he (defendant) may come under this rule and file an application for setting aside the decree on the ground of non-service of summons. The defendant-petitioner, in such a case, will deny service of summons, and dispute the plaintiff's claim and examine some witnesses from his neighbourhood to say that they did not see service of summons on him. The decree holder, opposite party, will examine the peon who will prove his return, the persons who identified the petitioner at the time of the alleged service of summons and some of those who happened to be present at the time of service.

The decree-holder's pleader in cross examination of the petitioner may suggest to him, if there is any ill-feeling between him and the decree-holder, and if the decree was passed in a money suit, then whether on any previous occasion the petitioner had borrowed money from the decree-holder or had any other transactions with him. In a rent suit questions may be asked as to whether the petitioner holds the decree holder's land and if he paid him (decree holder) rent before. If there be any registered *habuliyat* in respect of the *jama* in suit, executed either by petitioner, or his predecessors-in-interest, question should be asked touching that. If there was a previous decree, in respect of the *jama*, which the petitioner had satisfied, reference may be made in cross examination about it also. Other witnesses, examined by the petitioner may be asked about their social position, about their possible motive and if they constantly remain at home. [Try to get details from every witness and note all discrepancies on material points.]

The pleader for the petitioner should cross-examine the peon witness and other witnesses on the

then to give the details of lands sold and prices thereof Questions may be put about the quality of lands sold and about the quality of land in respect of which the proceeding has been started In trying to get quality of land witness may be asked about its produce —e g, if the land yields two or more crops a year whether the land is overflooded in the rainy season to the detriment of the crops, the situation of the land, e g whether it is by the road side or in the interior of the field and the like If the land be garden land then ask—what kinds of trees are there on the land and if all these trees are fruit bearing or if some of them are too old or too young (and in this way try to get an idea of the gross income of the land) rent payable to the *maliks* and the net profit from the land Ordinarily 15 to 20 times the net profit will be the market price of the land if the tenant has permanent right in it

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Cross examination of witnesses in a case under Order 9, Rule 13 of the C. P. Code for setting aside an *ex parte* decree

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The decree holder's pleader in cross examination of the petitioner may suggest to him if there is any ill feeling between him and the decree holder and if the decree was passed in a money suit then whether on any previous occasion the petitioner had borrowed money from the decree holder or had any other transactions with him. In a rent suit questions may be asked as to whether the petitioner holds the decree holder's land and if he paid him (decree holder) rent before. If there be any registered *kabuli jat* in respect of the *jama* in suit executed either by petitioner or his predecessors in interest question should be asked touching that. If there was a previous decree in respect of the *jama* which the petitioner had satisfied reference may be made in cross examination about it also. Other witnesses examined by the petitioner may be asked about their social position, about their possible motive and if they constantly remain at home. [Try to get details from every witness and note all discrepancies on material points.]

The pleader for the petitioner should cross-examine the peon witness and other witnesses on the

lines indicated before [Re —cross examination of the identifier and other witnesses, see hints for cross-examination given before]

CHAPTER XIII.

Cross-examination in Sanction cases.

Under the old law a party to a suit might get sanction from the Court for prosecuting a party, or a witness, for giving false evidence, or for proving a forged document in a judicial proceeding, or for any other offence mentioned in section 195 of the Cr P Code. But under the amended Criminal Procedure Code, which came into force from the 1st Sept 1922, a party to a suit or proceeding cannot get sanction from any Court for prosecuting any person in respect of offences mentioned in sec 195 of the Cr P Code. Under the new law, the party may move the Court for prosecuting a witness or a party, and if a *prima facie* case of offence committed is established, the Court will direct prosecution of the offender through one of its officers who will lodge a complaint in respect of the offence.

No notice of any application under sec 195 of the Cr P. Code need ordinarily be given to the opposite party, the object of the sanction being just to remove a statutory bar; and in a fit case the Court has absolute discretion in directing prosecution of the alleged offender. (Vide 41 Cal. 446).

Application for sanction under sec 195, Cr P. C. is ordinarily made in the trying Court (Vide 11 O W. N 568 F B). The successor-in-office of the officer who tried the case has also jurisdiction to grant

sanction or order prosecution (Vide Special Bench case reported in 14 C W N 799)

Ordinarily, when the application for sanction can be disposed of by referring to the record and judgment, no additional evidence is required to be adduced. But where sanction is sought for in respect of offences committed outside the Court, *e g* for snatching away attached property, disobeying an order of injunction etc, the party applying for sanction for prosecution is required to make out a *prima facie* case by adducing evidence in Court, and in some cases opportunities are also allowed to the opposite party to adduce rebutting evidence. Read 14 C W N 806

When a Court is moved for prosecution of a person for giving false evidence, the Court is required to be satisfied that the deposition containing the alleged false statement was duly recorded and read over and explained to the witness as required by law, and that the witness admitted the statement to be correct. It has been laid down that, unless the deposition was taken on oath and unless it was read over to the witness and was admitted by him to be correct, the deposition which is the foundation for prosecution will not be admissible in evidence in the Criminal Court. So the *Orderly* of the Court where the witness was examined is ordinarily called to prove that he had administered oath to the accused, and the Bench Clerk or some other officer is also examined to show that the deposition had been either read by or read over to the accused, and that he admitted his evidence as recorded by the Court to be correct. The *Orderly* may be cross-examined by putting questions as given below —

Questions

(a) Is it not a fact that a peon is deputed to the Court on guard duty every day?

(b) Is it not a fact that the peon on guard duty administers oath during your temporary absence *et cetera* when you go to call a pleader or leave the Court on some private business?

(c) Are you sure that you administered oath to the witness in question?

(d) What is the reason for your supposing that you administered oath to the particular witness?

(e) To how many witnesses do you administer oath daily?

(f) Did you know the witness from before?

(g) If so what was the occasion for it?

(h) Were you on leave at any time during the last year? If so, when?

(i) Do you go on casual leave at times to attend to private business? Are you sure that you attended the Court on the very day the witness was examined?

(j) Do you remember distinctly that this witness was examined? Who was the presiding officer at that time?

(k) What is the practice of this Court regarding reading over of deposition to a witness?

(l) Is it not a fact that the deposition after it has been recorded is handed over to you for making it over to the *Sheristadar* for reading it over to the witness?

To the *Peshkar* who might have proved the deposition and the signature of the witness at the bottom—the following questions may be put—

Questions

I think your work is very heavy in the Court and that a large portion of your time is devoted to writing out of orders on petitions filed by parties

(i) How many witnesses on an average are examined by the Court in a day ?

(ii) Is it possible for you to faithfully read over and explain the deposition to all witnesses examined by the Courts ?

[Here take the original record and make over the deposition to the *Peshkar* and ask him to read it out forthwith and translate as he goes on. You will see that in some cases the Bench clerk, due to his inadequate knowledge of the English language, will not be able to decipher all the words in the deposition, and he will create a scene in his attempt to translate the deposition which is recorded in English, into vernacular. Very often the translation will not be literal and you would request the Court to note the English portion and the translation thereof, whenever you find the translation not up to the mark. You will, besides, note the time which the Bench clerk takes in reading and explaining the deposition of one witness and argue later on that this Bench clerk could never have literally translated the depositions having regard to his other multifarious duties. In a case where a pleader thinks that a witness is giving palpably false evidence, he should request the Court, by a petition, to note the name of the person who administered oath to the said witness, and insist upon the deposition being explained to the witness in presence of the Court and a note being made by the Court to this effect. If this

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procedure is followed, an embarrassing situation, likely to arise in ordinary cases will be easily avoided when in due course of time an application is made for sanction to prosecute the witness for perjury. Further questions in continuation will be as follows —

(iii) Is it not a fact that depositions are ordinarily made over to some clerk in the office for explanation to the witness?

(iv) Is it not a fact that sometimes witnesses sign their depositions without reading them?

(v) Is it not possible that, in some cases, through oversight or for want of time depositions are not explained *in extenso* to the witnesses though their signatures are taken at the bottom?

Where sanction is asked for knowingly using a forged document as genuine in a judicial proceeding the party applying for sanction is required to show that the accused filed the document in Court. The pleader filing the document may be examined to prove that the accused has made over the document to him and that he had filed the document in Court on behalf of the accused. The pleader may be cross examined as follows —

Questions

(a) I suppose you have extensive practice and that it is not possible for you to remember what papers you got from which client and when?

(b) You believe that the document in question was made over to you either by your client or by some body in his behalf or by your clerk. Hence I take it that you are not in a position to say as to the person you got the document from?

In a case where collection papers have been discredited the pleader for the opposite party may ask the witness the following *questions* —

Questions :

(i) Is it not a fact that in some other suits against either the petitioner or some third person, the Court believed the papers and passed decrees in favour of the opposite party (your client) ?

(ii) In whose hand writing are the disputed entries ? Is not that *Gomasta* dead ? Is not the opposite party a big Zemindar, and his estate managed by Managers Naibs and *Gomastas* ? Is it not likely that the opposite party had reasonable grounds for believing the papers to be genuine and kept in due course of business ?

Where sanction is asked for in respect of a forged title deed or a forged bond, circumstances which may tend to show the genuineness of the document may be attempted to be elicited by cross examining the witnesses for the petitioner who has applied for sanction. The following questions may serve as hints for proceeding in such cases —

Questions :

(i) Is it not a fact that the Court having refused adjournment to the opposite party (*i.e.*, your client), the latter was unable to examine some respectable witnesses to the bond who were ill at the time the case was taken up ?

(ii) Is it not a fact that the petitioner denied tion of a bond in a suit brought against him by A and that the said suit was decreed in full ?

(iii) Is it not true that the opposite party has got some decrees against the petitioner and is about to execute them? And that the present application for sanction has been filed just to put pressure on the opposite party for avoiding payments under the decrees? [It should be borne in mind that no Court will grant sanction or order prosecution to satisfy private malice or grudge of any person Vide 15 C L 7 337 and 3 C W N 3]

N B—Sanction is not given when appeal is pending from the judgment of the primary Court Vide 6 Cal 308 Read in this connection 23 Cal 610 and 13 C W N 398 and 18 C W N 1342

Where there is unusual delay in applying for sanction the pleader for the accused should try to get out in cross examination the reason for the delay and if he find that no satisfactory reason for the delay has been assigned it may be argued that the sanction should be refused on the ground of delay Vide 11 C W N 119 and 19 C W N 447

PART VII.

CONVEYANCING.

CHAPTER I (DEEDS).

(A) **Conveyance** etc —Hints for drafting deeds and the models of (1) Conveyance (complicated), (2) Conveyance (simple) (3) deed of gift; (4) deed of exchange; (5) Partition deed (B) **Re Mortgage**—(6) Simple mortgage bond; (7) Mortgage by conditional sale, (8) Usufructuary mortgage bond (9) another form, (10) Release of mortgage property; (11) Reconveyance of mortgage property, (C) **Bonds** etc —(12) Hand note—(13) Simple money bond, (14) Instalment bond (15, 15a) Security bonds (16) Administration bond; (D) **Agreements** etc —(17) Agreement to sell, (18) Agree

Talaknama (35) Application for mutation of name after conveyance

CHAPTER I (a) (NOTICES)

(1) Notice to determine a tenancy in terms of the lease (2) by mortgagor to repay mortgage (10) Notice of ejectment through pleader (11) Pleader's letter of demand (12) Notice under sec 49 of the B. T. Act

CHAPTER II.

ALL INDIA STAMP LAW *Re* IMPORTANT DOCUMENTS
(Noting amendments made in different Provinces)

CHAPTER III.

Registration Law with short notes, costs etc.

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PART VII.

CHAPTER I.

Deed Drafting.

It often happens that clients come to junior practitioners for getting deeds drafted, and junior pleaders, fresh from college, experience great difficulty when called upon to draw up even a simple deed. To give them an idea on the subject, I have given models of documents, and it is expected that with the help of these models young practitioners will be able to master the art of deed drafting. All documents should be clearly worded, and any possible ambiguity of diction should be studiously avoided. The intention of the parties should be distinctly noted. Recitals of title are also necessary in cases of transfer of interest in an immovable property.

WILL (1)

Language.

The Will may be written in any language.

If the testator does not understand the language in which it is written, then the Will must be explained to him. It is better to draw up a Will in the language known to the testator.

Contents

A Will must clearly express the intention of the testator. Names of the persons appointed executor should be mentioned in the Will. Registration not compulsory, but it is safe to get Wills regis

Signature and attestation.

Every will must be attested by at least two witnesses. The signature or mark of the testator shall be so placed in the Will that it shall appear that the testator thereby intended to give effect to the writing as his Will. Two or more attesting witnesses must see the testator sign, or affix his mark to the Will, or see some other person sign the Will in the presence or under the direction of the testator, or receive from the testator a personal acknowledgment of his signature or mark, or of the signature of such person, and each of the witnesses must sign the Will in the presence of the testator but it is not necessary that more than one witness shall be present at the same time and no particular form of attestation is required.

CONVEYANCE (2)

Names of the vendor and vendee and their full descriptions should be given, the properties conveyed should be also clearly described. Amount of consideration should be stated, and as far as possible the reason which led the vendor to sell the property should also be noted.

Registration.

Section 54 of the Transfer of Property Act lays down that a sale of tangible immoveable property of the value of Rs 100 or more must be effected by a registered instrument. A sale for less value may be effected (1) either by a registered instrument or (2) by delivery of possession. A simple unregistered *Kobala* in respect of an immoveable property of less than Rs 100 does not confer any title, but title in respect of such a property may pass only by delivery of

possession 8 Cal 597 at page 612 (Judgment of Garth C J) and 19 Cal 623 F B

MORTGAGE BOND (3)

All mortgage bonds must be signed and attested by at least two witnesses Every mortgage bond shall ordinarily contain the following particulars —

- (1) Names and descriptions of the parties ,
- (2) Amount advanced or any other consideration ,
- (3) Rate of interest ,
- (4) Properties hypothecated by the bond ,
- (5) The time and mode of payment as agreed upon between the parties
- (6) The reason why the loan is contracted

USUFRUCTUARY MORTGAGE BOND (4)

In cases of *usufructuary mortgages* when the mortgagee gets possession of the properties it should be noted and a clause should be inserted as to how the debt will be paid off: *e* either from the proceeds of the properties, or partly from the proceeds and partly by payment Fact of previous mortgage, if any, should be ascertained and noted in the bond Where there is stipulation to pay compound interest clearly note the same Do not insert any penal clause as to interest (in case of failure to pay interest in time) as in that case the mortgagee will not get any interest But adequate damages under the Contract Act may be allowed to him by the Court This applies to all bonds

MORTGAGE BY CONDITIONAL SALE (5)

In cases of *mortgage by conditional sale*, fix a time within which the mortgagor would pay off the

and get a reconveyance of the property from the mortgagee. The deed must clearly show that it is a mortgage by conditional sale and not an out and out sale.

ENGLISH MORTGAGE (6)

English mortgages may be effected by deposit of title deeds within the Presidency towns of Calcutta Madras Bombay, Karachi Rangoon, and no document is required for creating such a mortgage.

Registration

Every mortgage bond must be registered *

MONEY BONDS (7).

These bonds are executed without hypothecating any property, such bonds shall contain the particulars 1 to 4 and 6 as required in case of mortgage bonds.

Registration

Registration of those bonds is not compulsory. But it is safe to get them registered. Executions of unregistered bonds are often denied by executants in law Courts.

LEASE (8)

Patta and Kabuliyat *Patta* is granted by the landlord and the *Kabuliyat* (counterpart of *Patta*) is executed by the tenant. These documents creating lease must contain the following particulars.

- (1) Names and descriptions of the parties,
- (2) Description of the property leased.

*After 1st of January 1905 (Vide Act IV of 1904) all mortgage bonds must be registered 12 I C 25 Permanent tenure can be mortgaged only by registered document 3 C W N 499

- (3) Rent settled and how it is payable ,
- (4) The period for which the lease is created.

N B.—In case of permanent lease the said fact should be noted

- (5) Amount of premium (*salami*), if any, paid by the tenant

Registration.

Lease of an immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument, but all other leases may be made either by an instrument or by oral agreement (Vide section 107 of the Transfer of Property Act)

GIFT (9).

Under section 103 of the T P. Act, a gift of immoveable property must be effected by a registered document, signed by or on behalf of the donor and attested by at least 2 witnesses But a gift of a movable property may be made either by a registered instrument as above or by delivery of possession

The deed of gift must contain.—

- (1) The names of the parties ,
- (2) Reason of the gift, *e. g.*, natural love or affection, &c.,
- (3) Description of the property ,
- (4) Estimated value of the property for stamp duty.

AGREEMENT. (10)

In drafting an agreement clearly state the intention of the parties and see that the terms are legal.

Stamp and Registration.

For these refer to the Chapters on Stamp and Registration and you will be able to ascertain

what stamp the document has to be written and what sum will be required for registering the same

N B—Drafts of various kinds of document given will show the particulars required to be noted in each

In the offices of solicitors deeds are drawn up on the lines followed in England I have given a few models of such documents as well to enable legal practitioners to draw up similar documents, if their clients would so desire.

How engrossed on paper.

The documents are usually written on hand-made paper in which a margin of nearly 2½ inches is kept on the left hand side, and a margin of about 1½ inches is left at the bottom of each page The body of the document commences after leaving a margin of nearly 6 inches at the top whereon the requisite stamp is affixed by the Stamp Superintendent of the Collectorate of a Presidency town, and the Sub Registrar, at the time of registration, records the fees paid and certifies that the document has been correctly stamped and is admissible for registration The executant of the document puts in his signature as shown in the models given below.

)

(A) CONVEYANCE, ETC.

No 1.—Conveyance

**Model of a Conveyance as ordinarily drawn up
in a Solicitor's office in India.**

This Indenture is made this thirteenth day of September in the year of Christ of one thousand nine hundred and twenty three.—**BETWEEN BRAJENDRA NATH GHOSH**, son of Pratul Chandra Ghosh deceased, of 32 Shampukur Road in Entally in Calcutta, by caste Kayastha, by profession a land-holder, hereinafter called the **Vendor** of the **one part** and **HARAN CHANDRA PAL**, son of Ram Chandra Pal deceased, of No. 51 Phulbagan Lane in Entally, by caste Kayastha and by profession a landholder, hereinafter called the **Purchaser** of the **other part**: **WHEREAS** at a public sale held by the Sheriff of Calcutta on the twenty first day of August one thousand eight hundred and eighty four in execution of a decree of the Hon'ble High Court of Judicature, Calcutta, at Fort William in Bengal in a title suit in the original Side of the said Court wherein one Hara Prasad Chowdhury was the plaintiff and Nalini Kanta Ghosal and others were the defendants, the premises now numbered NoPaikpara Road, Tallygunge, whereof the hereditaments and premises hereinafter particularly described and intended to be hereby granted and conveyed was sold and purchased by Pratul Chandra Ghosh and his brother Nakul Chandra Ghosh who obtained afterwards a formal conveyance of the said land and premises from the said Sheriff of Calcutta on the seventh day of September in the year of Christ one thousand eight hundred and eighty

five and entered into possession of the said premises,—And whereas the said purchasers were each entitled to an undivided moiety or half part or share of the said land and premises.—And whereas the said Pratul Chandra Ghosh died intestate in the year.....leaving him surviving the said vendor and whereas the said vendor is now absolutely seised and possessed of the entire premises covered by this deed by purchasing the remaining moiety share from the heirs of Nakul Chandra Ghosh by a bill of sale dated the*.....And whereas the said vendor has agreed with the said purchaser by an agreement dated.....for the absolute sale to him of the hereditments to be hereby granted being the premises No.....mentioned before and the inheritance thereof *in fee simple in possession free from incumbrance at the price of Rs. 10,000 ten thousand only*:—Now This Identure Witnesseth that in pursuance of an agreement between the vendor and the purchaser referred to before and in consideration of the said sum of Rupees ten thousand paid by the said purchaser to the vendor—the receipt whereof the said vendor doth hereby acknowledge, the said vendor grants unto and to the said purchaser his heirs and assignees,—All that piece and parcel of revenue-paying land messuages and hereditaments, together with the structure building stable out-houses etc. standing thereon, as per plan annexed hereunto and specifically described in the *Schedule A* of this Identure, and boundaries of which have been specifically mentioned in the said *Schedule* given hereinafter, together with all yards,

* Recital of title like these should be made wherever practicable.

courts, areas trees, sewers, drains, waterways, paths, passages, lights, liberties, privileges, easements, appurtenances, whatsoever, to the said land premises belonging or in anywise appertaining to or usually held or enjoyed therewith or reputed to belong or be appurtenant thereto **Be it stated** that the said purchaser will have and hold the hereditaments and premises hereby granted and conveyed into and to the use of the said purchasers his heirs and assigns for ever and the said vendee doth hereby for himself his executors and administrators covenant with the said purchaser that notwithstanding any act or deed or thing done by the said vendor the said purchaser will have absolute title to the property conveyed and the said vendor doth hereby declare that he has not in any way encumbered the property purported to be conveyed by this deed of sale and that the said purchasers, his heirs and assigns shall and may at all times peaceably and quietly possess and enjoy the said hereditaments and premises, and receive rents and profits thereof without interruption, claim or demand whatsoever from or by the said vendor or any person or persons lawfully or equitably claiming from or under or in trust from him—and *that free from all encumbrances whatsoever* and that the said vendor shall and will and for all times to come at the request and cost of the said purchaser his heirs or assigns do or execute or cause to be done or executed all such acts deeds and things whatsoever for further and more perfectly assuring the title of the purchaser to the said hereditament or any part thereof * **Be it is also stated** ,

* This recital may be necessary in particular cases

the vendor his heirs executors and assigns, whenever called upon by the said purchaser heirs representative and assigns, shall at the request and cost of the latter produce or cause to be produced in all law Courts, Government, Public, or Municipal offices, or other places such title deeds* in respect of the properties conveyed by this Indenture, excepting the documents mentioned in *Schedule B* which are here with made over by the vendor to the purchaser In witness whereof the said vendor doth hereunto subscribe his hand and seal on the day of the year mentioned at the outset in this Deed of Indenture

Signed sealed and delivered at Calcutta in presence of—

Signature

(of the executant and his seal)

(witnesses should sign their names here)

Memo of Consideration

[Here state the number of the G C Notes etc. made over by the vendee to the purchaser If any earnest money was paid before mention that fact as well]

}	<i>Signatures of witnesses</i>	<i>Signature of Executant</i>
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Schedule A.

All that piece or parcel of revenue paying tenanted messuage land and hereditament containing by measurement . Bighas Cottahs Chittaks sq feet of land commonly described as No...

* Similar recitals may be made in other documents if required

premises in Street in Sub division District
 Mouza Dīhi Thana
 Sub-Registry Office paying an annual Govern
 ment revenue of Rs as p to
 and as specifically shown in the map annexed hereto
 and bounded on the North by on the South by
 ' on the East by on the West by
 with pucca building stable out houses tree tanks
 etc thereon

Signatures of witnesses Signature of the Executant

No 2--CONVEYANCE (Simple)

This Indenture made the 15th of January of the
 year 1913 **BETWEEN** son of resident
 of in the District of by caste by
 profession hereinafter called the **Vendor** AND
 son of resident of in the District of
 by caste by profession hereinafter called
 the **Vendee** Witnesseth that the **vendor** being in
 need of money for satisfying his debts due to of
 under a registered mortgage bond dated the
 of the year and for defraying cost of
 litigation of the suit No of the year pending
 in the Original Side of the Honble High Court at
 Bombay and in which I the said **vendor** is a defendant
 doth hereby convey unto the **vendee** the premises
 No measuring more or less 4 cottas 7 chitacs
 in the street named within the jurisdiction of

taining 8 rooms, privies out houses etc in consider

tion of the sum of Rs 5 000 (five thousand) the receipt whereof the **vendor** doth hereby acknowledge The **vendee** shall from this date take possession of the said premises and shall enjoy the same in the vendor's right Be it stated that the vendor did not convey the said property to any body else nor did incur a mortgage in any way by mortgaging the same In witness whereof the vendor doth hereunto set his hand and seal on the day and the year above written *

Particulars of money paid

Notes

Coins

Rs 5 000

[Signature of the Vendor]

Signed and sealed and
delivered by the said
Vendor in presence of

1

2

Witnesses to the deed

No 3 —Deed of Gift

This Indenture made this day of 19

Between son of resident of thana in
the District of 24 Parganas by caste by profes-
sion hereinafter called the **Donor** of the one
part and Sreemati wife of the said donor by
caste by profession resident of thana
District hereinafter called the **Donee** of the

* Recitals of title and the condition about production of title deed which remain in Vendor's Possession may also be made as in No 1

other part witnesseth : WHEREAS the said Donor is the owner of the property mentioned in Schedule (A) hereunto annexed and whereas the said Donor out of love and natural affection for his wife the said donee and also for making provisions for the said Donee after Donor's death is anxious to bestow on the said Donee some property, the said Donor doth hereby bestow upon the said Donee and absolutely give away to her all that property mentioned in Schedule (A) hereunto annexed The said Donee from this day will become the owner of the said property and the Donor ceases to have any interest therein from this day The Donor doth from this day deliver possession of the aforesaid property in favour of the Donee *

In witness whereof the said Donor doth hereunto set his hand and seal on the day of the year mentioned above

[Signature of Donor]

Signed sealed and delivered by the said Donor in our presence

1
2
3

Witnesses

Accepted by the said donee and signed by her in token of such acceptance in public presence

[Signature of donee]

Witnesses

Schedule (A) of property †

*This clause is necessary for safety of title Recital about title as in No I should at be made

†Property should be described in the way shown in the Sch N

No 4 —Deed of Exchange

This Indenture made this 3rd day of June of the year 1912 **BETWEEN** Babu Rajanikanta Mookerjee son of Joyhari Mookerjee of Thana District by caste by profession herein after called the **First party** and Babu Soshibhusan Ghose son of Kalicharan Ghose of Baliaghata Thana Alipur District 24 Parganas hereinafter called the **Second party** Whereas the said **First party** is the owner of the property described in the *Schedule (1) A* annexed hereunto and the said **Second party** is the owner of the property described in the *Schedule B* and whereas both the parties have agreed that in exchange for the property of *Schedule A* the said **First party** would take the properties of *Schedule B (1)* and that in exchange of the properties of *Schedule B* the said **Second party** would take the properties of *Schedule A* belonging to the said **First party** This Indenture Witnesseth that in consideration of the exchange of the properties of *Schedule B* the said **First party** doth hereby grant unto the said **Second party** the properties of *Schedule A* and the said **Second party** doth grant the properties of *Schedule B* to the said **First party** in exchange of the properties of *Schedule A* Be it stated that the properties of *Schedule of A* and *B* which are valued at Rs 1,300 each are free from all incumbrances and that the parties to this Indenture do absolutely get from this day the properties as stated in this document In witness whereof the parties to these presents do hereunto set their hands and seals on this 3rd day of June of the year 1912

(1) Here recite how title was acquired

Signed and sealed by the said
parties in the presence of.....

.....

Signature of witnesses.

[Signature of First party.]

[Signature of Second party.]

Schedule

Schedule A.....(Value Rs. 1,000).

Schedule B.....(Value Rs. 1,000).

No. 5.—Partition Deed.

This Indenture is made this.....day of.....19
.....**BETWEEN** Babu.....son of.....resident
of.....Thana.....in the District of.....by caste
.....by profession a pleader hereinafter called the
First party and Babu.....son of.....resident of
.....Thana.....in the said District by caste
.....by profession...hereinafter called the **Second
party**: whereas the **First party** and the **Second
party** inherited the properties of *Schedules A, B, C,
D*, as heirs of their deceased father and had hitherto
been in joint and peaceful possession of the aforesaid
properties, each of the above parties having an 8 annas
share in the said properties, and whereas it has
of late become inconvenient for both the parties to
jointly possess the properties: **Now This Indenture
Witnesseth** that they amicably divide the proper-
ties among them as per details hereinafter stated
In the map of Schedule A is given the plan of their
family dwelling house, the portions shewn in red
in the said plan are allotted to the **First party** and
the portions shown in yellow are allotted to the
Second party portions shown in blue remain joint
between the parties. Besides the above, the proper-
ties movable and immovable of Schedule B ar

mortgagee, the possession of the mortgaged property remaning with the said mortgagor, for securing payment on or before the.....day of.....19.... of the principal sum of Rs. 1,000 as the mortgage money with the interest thereon at the rate of 12 per cent per annum until repayment of the said mortgage money with interest which may be found due. Be it stated that the mortgagor has good, clear and perfect title to the property hereby mortgaged free from all charge, incumbrance or lien and that he doth make over the title-deeds mentioned in Sch. (B) to the mortgagee.

In witness whereof the said mortgagor doth hereunto set his hand and seal on the day of the year first above written.

[Signature of mortgagor]

(A) Numbers and details of notes delivered

(B) List of title deeds. Made over by the mortgagor to the mortgagee,

Signed sealed and delivered by the said mortgagor in our presence

... ..

.. ..

Witnesses to the bond }

Note.—All mortgage bonds must be attested by at least two witnesses

No. 7.—Mortgage Bond by conditional sale

This Indenture by way of Mortgage by conditional sale under the provisions of the Transfer of Property Act on the.....day of.....19...BETWEEN
... ..son of.....resident of.....thana.....District.....

by Caste by Profession hereinafter called the
Mortgagor of the one part and Babu son of
resident of thana District by Caste by
profession hereinafter called the Mortgagee
of the other part Witnesseth that in consideration
of the sum of Rs. 1500 (one thousand and five
hundred in 15 notes of Rs 100 each per numbers
given hereinafter) now paid to the said mortgagor
by the said mortgagee—the receipt whereof the said
mortgagor doth hereby acknowledge—the said
mortgagor hereby conveys and assigns by way of
mortgage by conditional sale all that [describe the
property as given in No 1 before and recite title] to
hold unto and to the use of the said mortgagee, from
this day the said mortgagee getting possession of the
mortgaged property under the terms of this bond
for securing payment on day of 19 of
the principal sum secured with the interest thereon
at 12 per cent per annum which will be set off in
the usufruct of the mortgaged property and the
said mortgagee hereby doth promise to keep clear
accounts thereof

It is further agreed Between the parties that
the said mortgagee would retain possession of the
property mortgaged until the principal sum together
with interest due, after crediting sums paid in cash
and from the proceeds of the property, be satisfied
in full On satisfaction of the mortgage the mort-
gagee undertakes to execute a Reconveyance of the
property mortgaged in favour of the mortgagor, the
costs of such reconveyance to be paid by the said
mortgagor It is also agreed that the mortgagee
would not do any act in respect of the property
his possession by which its value may be

The said mortgagor doth undertake regularly to pay the Government revenue and Municipal taxes of the said premises and in case he fails to make such payment, the said mortgagee may pay such revenue and taxes; and sums such paid would be considered as additional principal sum advanced to the said mortgagor under the term of this deed and would carry interest at the stipulated rate.*

In witness whereof the said mortgagor doth here unto set his hand and seal on the day of the year mentioned at the outset.

Details of notes delivered to the mortgagor by the mortgagee.

No.....

Rs.

.....

.....

Rs. 1500.

[Signature of mortgagor].

Signed, sealed and delivered by the said mortgagor in presence of—

1.....

2.....

Witnesses to the bond.

No. 8—Usufructury mortgage bond.

This Indenture made by way of Usufructuary mortgage bond under the provisions of the Transfer of Property Act on the.....day of.....19.....Between.....son of.....resident of.....thana.....District.....by

*If any title deed be made over to the mortgagee the said fact should also be noted.

caste by profession hereinafter called the mortgagor of the one part and Babu son of resident of thana District by caste by profession hereinafter called the mortgagee of the other part Witnesseth, that in consideration of the sum of Rs 1500 (one thousand and five hundred in 15 notes of Rs 100/ each as per numbers given hereafter) now paid to the said mortgagor by the said mortgagee—the receipt whereof the said mortgagor doth hereby acknowledge—the said mortgagor hereby doth put the mortgagee in possession of the properties specifically described in the Schedule annexed hereunto and which are mortgaged hereby And it is agreed between the parties that the said mortgagee will hold possession of the properties mortgaged by this covenant for a term of 20 years from this date and hold the said properties for securing payments of the amount hereinbefore mentioned with interest And it is further agreed that in case the mortgagor fails to put the mortgagee into possession of the properties demised or if the mortgagee is dispossessed of the property either by the mortgagor or by any body else after delivery of possession on any future time within the aforesaid period of 20 years—the mortgagee will be entitled to get interest at 12% per annum on the proportionate amount that will be found due on date of dispossession or on the entire amount covered by this deed in case of the mortgagor's failure to put the mortgagee in possession of the property And it will be optional with the mortgagee to sue the mortgagor either for possession of the property and to retain possession thereof till his dues will be satisfied in terms of this covenant or to get a

gage decree for the amount due to him on account of principal and interest against the property hereby mortgaged and to realise his dues by sale of the properties on the mortgagor's failure to make payment within the day of grace fixed in the decree This Indenture also witnesseth that the said mortgagor hereby undertakes to pay Government revenue tax and Municipal tax of the property hereby mortgaged and in case of his failure to make payment of Government revenue or Municipal tax of any particular quarter the mortgagee will be entitled to pay the same for the protection of the property and the sum so paid will be considered as additional principal sum advanced to the said mortgagor in terms of the deed and will carry interest at the rate hereinbefore mentioned In witness whereof the mortgagor and mortgagee set their hands and seals on the day of the year mentioned at the outset

Schedule (A)

Memo of consideration money paid

Schedule (B)

Description of the property mortgaged

Schedule (C)

Signatures of the mortgagor, the mortgagee and those of the witnesses to this bond should be arranged at the bottom of deed No 5

No 9—Usufructuary mortgage bond—This may be almost like a Mortgage by conditional sale No (7) with necessary verbal alterations.

No 10—Release of Mortgaged property

This Indenture, made this 5th day of January 1925, between Mr , Son of Mr , of ..

Dist hereinafter called the **Mortgagee First Party**—And Son of Mr of District hereinafter called the **Mortgagor Second Party** witnesseth Whereas the **Second Party** executed a deed of mortgage in favour of the **First Party** for a loan of Rs 5000 (five thousand only) bearing interest at 9 per cent per annum And Whereas the said **Second Party** has this day paid unto the **First Party** a sum of Rs in full (or part) satisfaction of the debt due under the aforesaid mortgage bond the receipt whereof the **First Party** doth hereby acknowledge the said first party doth by this Indenture release the mortgaged property mentioned in the aforesaid mortgage deed, a copy whereof is annexed hereunto as a Schedule to this Indenture from the mortgage charge and declare the properties [part or whole as may be agreed] covered by the said deed free from all incumbrances and liabilities under the *Mortgage Bond* referred to at the outset *Be it stated* that the original mortgage deed as well as the title deeds mentioned therein are made over this day to the **Second Party** and that the said **Second Party** doth hereby acknowledge receipt of the said title deeds and the mortgage bond In witnesses whereof the said parties do hereunto subscribe their hands and seals on this day of the year mentioned at the outset in this Deed of Indenture

Schedule (A)—a true copy of the mortgage deed referred to in this Indenture

Schedule (B) (List of documents returned to First Party by the Second Party)

Schedule (C) (Memo of payment)

Signature of Witnesses	Signature of the Parties
1.....
2.....
3.....	

[N. B. If so agreed between the parties a part of the mortgaged properties may be released on part payment].

No. 11.—Reconveyance of mortgaged Property.

This Indenture made this 5th day of January 1930,
 Between.....son of.....resident of.....District
hereinafter called Mortgagee First Party and
son of.....resident of.....District.....herein-
 after called the Mortgagor, Second Party:
 Whereas by an Indenture dated.....executed by the
 Second Party in favour of the First Party a copy
 whereof is attached to this Indenture as its Schedule
 (A), the Second party took a loan of Rs. 5000/- bearing
 an interest at 9% per annum by mortgaging the pro-
 perties specifically mentioned in the Schedule (B)
 annexed hereunto (and which are also described in
 the copy of the mortgage deed which is made
 Schedule (A) to this document:) And Whereas the said
 Second Party Doth this day pay unto the said First
 Party a sum of Rs.....in full satisfaction of the
 mortgage debt including interest—the receipt whereof
 the said first party doth hereby acknowledge: Now
 This Indenture by way of Reconveyance Witnesseth
 that the said Second Party doth hereby transfer his
 interest as a mortgagee in the properties mentioned
 in the Schedule in favour of the said Second Party
 and declare the properties mentioned in the Schedule

absolutely free from any mortgage, charge or incumbrance whatsoever created by the **Indenture** referred to before. **AND** the **First Party** also returneth the aforesaid mortgage bond in original with the title deeds mentioned in the said bond to the **Second Party** and the latter doth hereby acknowledge the receipt of those documents. In witness whereof the parties to this deed subscribe their hands and seals on the day of the year mentioned at the outset

Schedule (A).

A true copy of the mortgage deed referred to in this Indenture.

Schedule (B)

Descriptions of the properties reconveyed.

Schedule (C).

List of documents returned by the First Party to the Second Party

Schedule (D).

Memo of consideration money paid by the Second party to the first party.

Signature of the First Party

Signature of the Second Party .

Signature of the
witnesses.

(C)

Handnotes, Bonds Etc.

No. 12—Handnote

On demand I promise to pay to Mr. Bankim Chandra Mukherjee of in the District of or order, the sum of Rs 1000/- one thousand only bearing interest at 9% per

Schedule (C) (Memo of payment)

Signature of Witnesses

Signature of the Parties

1

2

3

[N B If so agreed between the parties a part of the mortgaged properties may be released on part payment]

No 11 —Reconveyance of mortgaged Property

This Indenture made this 5th day of January 1930
 Between son of resident of District
 hereinafter called Mortgagee First Party and
 son of resident of District herein
 after called the Mortgagor, Second Party
 Whereas by an Indenture dated executed by the
 Second Party in favour of the First Party a copy
 whereof is attached to this Indenture as its Schedule
 (A) the Second party took a loan of Rs 5000/ bearing
 an interest at 9% per annum by mortgaging the pro-
 perties specifically mentioned in the Schedule (B)
 annexed hereunto (and which are also described in
 the copy of the mortgage deed which is made
 Schedule (A) to this document) And Whereas the said
 Second Party doth this day pay unto the said First
 Party a sum of Rs in full satisfaction of the
 mortgage debt including interest—the receipt whereof
 the said first party doth hereby acknowledge Now
 This Indenture by way of Reconveyance Witnesseth
 that the said Second Party doth hereby transfer his
 interest as a mortgagee in the properties mentioned
 in the Schedule in favour of the said Second Party
 and declare the properties mentioned in the Schedule

absolutely free from any mortgage, charge or incumbrance whatsoever created by the **Indenture** referred to before **AND** the **First Party** also returneth the aforesaid mortgage bond in original with the title deeds mentioned in the said bond to the **Second Party** and the latter doth hereby acknowledge the receipt of those documents **In witness** whereof the parties to this deed subscribe their hands and seals on the day of the year mentioned at the outset

Schedule (A)

A true copy of the mortgage deed referred to in this Indenture

Schedule (B)

Descriptions of the properties reconveyed

Schedule (C)

List of documents returned by the First Party to the Second Party

Schedule (D)

Memo of consideration money paid by the Second party to the first party

Signature of the First Party

Signature of the Second Party

Signature of the
witnesses

(C)

Handnotes, Bonds Etc

No 12—Handnote

On demand I promise to pay to Mr Bankim Chandra Mukherjee of _____ in the District of _____ or order, the sum of Rs 1000/ one thousand only bearing interest at 9% per

annum for the sum received in cash as per G C notes mentioned in the left margin

Nos of G C notes delivered

of Rs 500/—

of Rs 500/—



Signature of the executant

12 (A)—Assignment of Handnote.

For assignment—write on the back of the handnote

“Pay to Mr _____ of _____ order”

Signature of holder

date

No 13 —Simple money bond

This Memorandum of Agreement made the 9th day of June Between Mr _____ son of _____ resident in the District of _____ hereinafter called the First Party and Mr _____ son of _____ resident of _____ in the District of _____ hereinafter called the Second Party Witnesseth that in consideration of the sum of Rs 1000/— paid by the Second Party to the First Party as a loan bearing interest at 12% per annum, the receipt where of the said first party doth hereby acknowledge this Indenture is executed by both the parties AND it is agreed that the loan will be repaid by the First Party to the Second party within one year from this date It is further agreed that the first party would pay interest regularly to the Second party month by month, and that in default of payment of six months interest at a time, the interest due will be considered as principal and carry interest at the bond rate This Indenture also witnesseth that three months

notice of payment shall be given by the **First Party** to the **Second Party**, and that the time and place of payment will be fixed by the **Second Party** on the receipt of the aforesaid notice, and that in case of part payments the same would be endorsed by the **Second Party** on the back of this Indenture In witnesses whereof both the parties to this Indenture accept the terms of this covenant and do hereunto set their hands and seals on the day of the year mentioned at the outset

Schedule 1

Details of consideration money paid (Number and descriptions of notes etc)

Signature of the first party

Signature of the Second party

Signature of
witnesses

No 14—Instalment bond

Know All Men by These Presents—that I, P M Navraj son of resident of in the District of the **Obligor** undertake to pay to Mr the obligee the sum of Rs 500/- advanced by the said **Obligee** to me this day with interest calculated at per cent per annum for a period of years the total sum payable coming up to Rs 800/ (eight hundred) on the conditions set forth below —

Now the condition of this obligation is that if I, the obligor, pay unto the said obligee Rs 100/ (one hundred only) a year in the month of April every year for eight years this obligation will be discharged an full *Be it stated* that in case of failure to pay any

instalment as set forth in the Schedule annexed hereunto, the Obligee will be entitled to sue the Obligor for the amount due on account of the defaulted instalment with interest at 12 per cent per annum and that in case of default in respect of more instalment than one the entire sum due under the bond for all the instalments shall become forthwith payable and shall carry interest at 12 per cent per annum and the Obligee will be at liberty to sue the Obligor for enforcement of this obligation. In witness whereof the aforesaid obligor sets his hand and seal on these presents on the——day of——month——of the year——in presence of

The witnesses to this deed—

Schedule (A) Memo of consideration

Schedule (B) (Description of instalment agreed upon)

Signature of witnesses. Signature of the executant.

No. 15.—Security bond to be filed in Court on behalf of a Judgment debtor, brought under arrest, when he alleges that he will apply for insolvency, and prays for his release. Sec. 55 (4) of the C. P. Code, and the Court calls upon him to furnish security.

In the Court of.....at.....

.....Suit no.....of 19.....

.....against.....

A. B. of.....plaintiff

C. D. of.....Defendant.

Whereas in execution of the decree in the suit aforesaid, the said J. D. has been arrested under a warrant and brought before the Court of.....and

whereas the said J D has applied for his discharge on the ground that he undertakes within one month to apply under section 7 of Act No V of 1920, to be declared an insolvent and the said Court has ordered that the said J D shall be released from custody if the said J D furnish good and sufficient security in the sum of Rs that he will appear when called upon and that he will within one month from this date apply under section 7 of Act No V of 1920 to be declared an insolvent therefore I , inhabitant of

 have voluntarily become security and do hereby bind myself my heirs, and executors to Judge of the said Court and his successors in office that the said J D shall appear at any time when called upon by the said Court and will apply in the manner and within the time hereinbefore set forth, and in default of such appearance or of such application I bind myself, my heirs and executors to pay to the said Court on its order, the sum of Rs

In Witness whereof I set my hand at this day of 19

(Sd)

Witnesses

Surety

**No 15 (a)—Security Bond for safe custody of
movables attached (Prescribed by the
Madras High Court)**

(Or XXI r 43)

In the Court of at

Civil suit no

of

A B of

against

C D of

Know all men by these presents that we, I J
of etc, and K L of etc, and M

instalment as set forth in the Schedule annexed hereunto, the **Obligee** will be entitled to sue the **Obligor** for the amount due on account of the defaulted instalment with interest at 12 per cent per annum and that in case of default in respect of more instalment than one the entire sum due under the bond for all the instalments shall become forthwith payable and shall carry interest at 12 per cent per annum and the **Obligee** will be at liberty to sue the **Obligor** for enforcement of this obligation. In witness whereof the aforesaid obligor sets his hand and seal on these presents on the——day of——month——of the year——in presence of

The witnesses to this deed—

Schedule (A) Memo of consideration

Schedule (B) (Description of instalment agreed upon)

Signature of witnesses. Signature of the executant.

No. 15.—Security bond to be filed in Court on behalf of a Judgment debtor, brought under arrest, when he alleges that he will apply for insolvency, and prays for his release. Sec. 55 (4) of the C. P. Code, and the Court calls upon him to furnish security.

In the Court of.....at.....

.....Suit no.....of 19.....

.....against.....

A. B. of.....plaintiff

C. D. of.....Defendant.

Whereas in execution of the decree in the suit aforesaid, the said J. D. has been arrested under a warrant and brought before the Court of.....and

whereas the said J D has applied for his discharge on the ground that he undertakes within one month to apply under section 7 of Act No V of 1920, to be declared an insolvent and the said Court has ordered that the said J D shall be released from custody if the said J D furnish good and sufficient security in the sum of Rs that he will appear when called upon and that he will within one month from this date apply under section 7 of Act No V of 1920 to be declared an insolvent therefore I , inhabitant of

have voluntarily become security and do hereby bind myself my heirs, and executors to Judge of the said Court and his successors in office that the said J D shall appear at any time when called upon by the said Court and will apply in the manner and within the time hereinbefore set forth, and in default of such appearance or of such application I bind myself my heirs and executors to pay to the said Court on its order the sum of Rs

In Witness whereof I set my hand at this day of 19

(Sd)

Witnesses

Surety

**No 15 (a)—Security Bond for safe custody of
movables attached (Prescribed by the
Madras High Court)**

(Or XXI r 43)

In the Court of at
Civil suit no of

A B of
against

C D of

Know all men by these presents that we, I J
of etc and K L of etc, and M. N

of etc, are jointly and severally bound to the Judge of the Court of in Rupees to be paid to the said Judge, for which payment we bind ourselves and each of us, in the whole our and each of our heirs, executors and administrators, jointly and severally by these presents

Dated this day of , 19 And whereas the movable property specified in the Schedule herunto annexed has been attached under a warrant from the said Court, Dated the day of 19 in execution of a decree in favour of in suit No of 19 on the file of and the said property has been left in the charge of the said I J

Now the condition of this obligation is that if the above bounden I J shall duly account for and produce when required before the said Court all and every property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void otherwise it shall remain in full force

I J.

K L

M. N.

Signed and sealed by the above bounden in the presence of . . .

No 16.—Administration Bond in cases under Act V of 1881. (Now Act XXXIX of 1925)

In the Court of the District Judge of 24 Pargannas
Case No of 1912

Know all men by these presents that I
(name of the applicant, his residence, caste, profession)

of principal and I (name of surety) of
 son of resident of by caste by profes
 sion surety we are held and firmly bound on
 to the District (Judge or Delegate) of and his
 successor in office for the time being, in the penal
 sum of Rs only to be paid to the District (Judge
 (or delegate) or his successor in office for which
 payment—if ordered by Court in accordance with
 law we bind ourselves, our heirs, executors, and
 administrators any and every one of them jointly by
 these presents

Signatures of witness Signature of the Principal

Surety

Whereas the said District (Judge or Delegate)
 or has on the petition of (petitioner's name)
 directed by an order dated that Letters of
 Administration to the estate late resident of
 should be granted under the provisions of Act V of
 1881* to (petitioner's name) and whereas the said
 (petitioner's name) in consideration of such grant
 of administration engaged for the due collection,
 getting in, and administering the estate of -
 deceased Now the condition of the above written
 obligation is such that if the said (petitioner's name)
 shall duly collect get in and administer the estate
 of the said deceased and shall do all things necessary
 and required by the law in order to the due collection
 getting in an administration of the said estate of
 the said deceased, then the above written obligation

* Now Act XXXIX of 1925

of etc are jointly and severally bound to the
 Judge of the Court of in Rupees to be
 paid to the said Judge for which payment we bind
 ourselves and each of us in the whole our and each
 of our heirs executors and administrators jointly
 and severally by these presents

Dated this day of 19 And
 whereas the movable property specified in the
 Schedule hereunto annexed has been attached under
 a warrant from the said Court Dated the
 day of 19 in execution of a
 decree in favour of in suit No of
 19 on the file of and the said property
 has been left in the charge of the said I J

Now the condition of this obligation is that if
 the above bounden I J shall duly account for and
 produce when required before the said Court all
 and every property aforesaid and shall obey any
 further order of the Court in respect thereof then
 this obligation shall be void otherwise it shall
 remain in full force

I J

K L

M N

Signed and sealed by the above bounden in
 the presence of

**No 16- Administration Bond in cases under
 Act V of 1881 (Now Act XXXIX of 1925)**

**In the Court of the District Judge of 24 Pargannas
 Case No of 1912**

**Know all men by these presents that I
 (name of the applicant his residence, caste profession)**

of principal and I (name of surety) of
 son of resident of by caste by profes
 sion surety we are held and firmly bound on
 to the District (Judge or Delegate) of and his
 successor in office for the time being in the penal
 sum of Rs only to be paid to the District (Judge
 (or delegate) or his successor in office for which
 payment—if ordered by Court in accordance with
 law we bind ourselve our heirs executors and
 administrators any and every one of them jointly by
 these presents

Signature of witness

Signature of the Principal

Surety

Whereas the said District (Judge or Delegate)
 or has on the petition of (petitioner's name)
 directed by an order dated that Letters of
 Administration to the estate late resident of
 should be granted under the provisions of Act V of
 1881* to (petitioner's name) and whereas the said
 (petitioner's name) in consideration of such grant
 of administration engaged for the due collection
 getting in and administering the estate of -
 deceased Now the condition of the above written
 obligation is such that if the said (petitioner's name)
 shall duly collect get in and administer the estate
 of the said deceased and shall do all things necessary
 and required by the law in order to the due collection
 getting in an administration of the said estate of
 the said deceased then the above written o

* Now Act XXXIX of 1925

Ram Chandra Ganguly, resident of Sodepore in the District of 24 Perganas, by caste a Brahmin, by profession a money-lender hereinafter called the **Lessor First Party** and Babu Haraprosad Ghosh son of Babu Chandranath Ghosh, resident of Ariadah in the District of 24 Perganas, by caste *Kayastha* by profession a merchant, hereinafter called the **Lessee the Second Party** Witnesseth that the **First Party** is possessed of a two storied dwelling house in the town of Cawnpore standing on about ten cottas of land specifiially described in the Schedule of this document, and that the said house is at present in the occupation of Mr Samuel of . who will vacate same by the end of this month, and that the **Second Party** having applied to the said **First Party** for getting a lease of the said house with lands appertaining to its compound for a period of twelve months from July next, at a monthly rent of Rs. 100, and the **First Party** having accepted the terms proposed by the **Second Party**, both the parties enter into this covenant and agree that the **Second Party** would occupy the aforesaid house together with all yards, courts, areas, trees, pathways, passages etc appertenant to the said promises as a tenant of the **First Party** from the 1st of July 1927 until the 30th of June 1928 Be it stated that whether the **Second Party** actually occupies the premises or not he would be bound to pay the rent for the period set forth above—the rent of the house of any particular month being payable within the fifth day of the month following AND the **Second Party** doth hereby undertake to keep the premises leased in as good a condition in which it is at present, reasonable wear and tear for

occupation being excepted and that the **Second Party** would deliver possession of the property to the first party on the expiry of the term of this lease and in default undertakes *to pay a reasonable compensation to the First Party for detention of possession after the expiry of the term of this lease.* Be it also stated that the Lessor and the Lessee and their heirs, executors and assigns would be bound by the terms of this covenant Be it also stated that the **Lessee Second party** would pay all Municipal taxes for the premises leased by this Indenture during the period of his occupation over and above the rent settled between the parties In witness whereof the aforesaid Lessor and the Lessee hereunto subscribe their hands and seals on the day of the year mentioned at the outset in this Deed of Indenture

Signed sealed and delivered—

(Here in presence *Signature of the lessor (First Party)*
of witnesses should
sign their names) *Signature of the lessee (2nd Party)*

Schedule

All that piece and parcel of land in the town of in street—bearing Municipal number—situate within—Municipality with the two storied building standing thereon, together with all yards, Courts as mentioned in the body of this deed The boundaries of the property leased, measuring more or less cottas are given below —

North.....

East.....

South.....

West.....

*Signature of witnesses**Signature of the parties.*

.....

.....

.....

No. 19.—Agreement for referring a dispute to arbitration.

Know all men by these presents—that I, Nafar Chandra Chatterjee, Son of Gokul Chandra Chatterjee, by caste Brahmin, by profession a pleader, of No. 12 Mott's lane, Delhi and I, Ram Chandra Chatterjee, Son of Gokul Chandra Chatterjee by caste Brahmin, by profession.....of No. 12 Mott's lane, Delhi, do by this Deed of Indenture appoint Mr.....ofas *Arbitrator for partitioning our ancestral properties, movable and immovable as mentioned in the Schedules A and B annexed hereunto and do hereby bind ourselves our heirs, assigns, executors, administrators to accept the award that may be made by the said Arbitrator in pursuance of and in terms of this Indenture. Be it stated that the said Arbitrator will measure the properties and prepare plans thereof and estimate their market values on the evidence that may be adduced by us before him; and that the said arbitrator would divide the properties in two equal shares, one share to be allotted to each. AND the said Arbitrator is also authorised to award compensation to any of the parties for equalising the values of the share, should the ends of*

justice demand the same Be it further stated that the aforesaid **Arbitrator** who has acceded to our request to partition would get Rs 1000 as his remuneration for the work to be done besides the cost that may be incurred for engaging a surveyor for preparation of the plans of the properties mentioned in Schedule (A) to this Indenture In witness whereof the **First Party** and the **Second Party** subscribe their hands and seals on the 5th day of January 1927

Signature of the executants

Signed and sealed in our presence

Signature of witnesses

Schedule (A)

Of immovable properties to be partitioned

Schedule (B)

Of movable properties to be partitioned

Signature of witnesses

Signature of Parties

No 20 —Agreement Re Building contract

This Memorandum of Agreement made the ninth day of June nineteen hundred and twenty five Between Messers Marshall & Co of 55 Cawnpore Road Delhi hereinafter called the Builder **First Party** and R T Dinshaw Advocate Rangoon High Court hereinafter called the **Second Party** Whereas the said parties hereto having agreed that the first party would construct a three storied house on a plot

of land measuring about ten Cottahs situate on No. 3 Wring Road, Allahabad, specifically described in the Schedule as per plan annexed hereunto, at a cost of Rs. 25000/- (twenty five thousand only), This Memorandum of Agreement witnesseth—that the first party would construct the said building within a period of six months from this date by using materials of the best quality and that it is agreed that second party would make payments to the first party at the rate of Rs. 2000/- (two thousand only) at the end of every fortnight provided the work done by the First Party is worth that amount, calculation being made according to the rate specified in Schedule (B) annexed hereunto; and that the final payment would be made after completion of the work and an examination of the same by an expert to be nominated by both the parties. Be it here stated that in case the parties fail to agree about the nomination of an expert, Messrs—the renowned Architects of Calcutta will be paid their prescribed fee for examination of the work and for report as to whether the work done by the First Party is in conformity with the terms of this Agreement; and the cost payable to the said firm of Architects shall be borne by both parties in equal shares. Be it further stated that if the building or any part thereof be not found to accord with the specifications mentioned in the plan which is made Schedule (A) to this Indenture, the First Party will be bound to replace or rebuild the same within one month from the date of the expert's report at their cost and the First Party doth hereby undertake to pay compensation of Rs. 300/- (three hundred only) per month for every month in excess of six months from this date

during which the **Second Party** would be prevented from entering and using the building owing to to the laches of the **First Party** In Witnesses where- of the parties to this **Indenture** subscribe their hands and seals on the day of the year mentioned at the outset in this deed of Indenture

(A) Schedule of payment made

(B) Schedule of rates and calculations }
showing how Rs 25000/ has been arrived at }

(C) Schedule—Plan according to which the building has to constructed

Signature of First party

Signature of Witnesses

Signature of 2nd Party

(E) Deeds Re : Partnership business

No 21 —Partnership d-ed

This Indenture made the day of of the year
Between Mr son of resident of thana .
District hereinafter called the **First Party**
and Mr son of resident of thana
District hereinafter called the **Second**
Party Witnesseth that the aforesaid parties do
hereby agree to become partners in the joint trade
in mica which they are going to start on terms and
conditions set forth below —

Articles of partnership business —

(1) That the aforesaid business in mica shall be carried under the name and style of *Messrs Gonesh Lal and Hari Lal & Co* and that the head of the aforesaid firm shall be at Bombay.

(2) That each of the aforesaid partners shall advance sums up to the limit of Rs 50000/- within five years from this date and that payments would be made from time to time as may be agreed upon between the parties. Should one partner advance more than the amount due in his share he will be entitled to get interest at 12% per annum on the excess sum so advanced.

(3) That each of the partners shall have half share in the said business and shall get half share of the profits and shall be liable for half of the loss if any.

(4) That each of the partners will be entitled to draw upto Rs 200/- as allowance every month and the accounts of the business will be settled at the close of every financial year and attested by both the parties.

(5) That the business will be carried on as long as possible and should one of the partners die during the continuance of the partnership business then the surviving partner will be entitled to carry on the business entirely at his own risk from the date of death of the deceased partner and the heirs of the deceased partner will get on an adjustment of accounts profits of the business and will be liable for the loss, if any, in the share of the deceased partner up to the time of his death.

(6) That if any partner desires to retire from the business he must give six months notice of his intention to do so to the other partner to enable accounts of the business to be taken for ascertaining the assets and liabilities and it will be optional with the other partner to continue the business after the

retirement of the retiring partner on paying unto him the value of the dues in his half share

(7) That in case of difference of opinion arising between the parties during the continuance of the business the said difference will be decided by arbitration as far as possible

In Witness whereof we both the partners set their hands and seals to this indenture on the day of the year mentioned at the outset

Signature of the Witnesses

*Signature of the
Executants*

No 22 —Deed for dissolution of partership business

This Indenture made the day of
Between Mr Son of resident of
District hereinafter called the **Partner No I,**
First Party and Mr son of resident of
district hereinafter called the **Partner No II**
Second Party, Whereas by an Indenture dated the
7th day of May 1915 made between the two partners
set forth above the parties agreed to carry on a
business in hide in partnership in equal shares each
advancing half of the capital and to share profit and
loss of the business in equal shares **And Whereas**
the partners have carried on the business in terms of
the aforesaid Partnership deed up till now **and**
Whereas the Partner No I first party having expressed
his willingness to retire from the business,—accounts
were taken of the stock in trade and assets and
liabilities of the firm and it has been found
Partner No I first party is entitled to a sum of ,

Rs 5000 in his half share in the business and Whereas the Second Partner has this day paid unto the first partner the said sum of Rs 5000 IT IS AGREED BETWEEN BOTH THE PARTIES BY THESE PRESENTS that the aforesaid partnership business which has been carried on in the town of Calcutta under the name and style of Messrs Jardin & Co be dissolved from this date and that the entire joint business be now wound up *Be it stated* that the partner No II Second party may carry on the said business in the name of the existing firm at his sole risk and liability and will get all future profits and shall be liable for loss if any Now this Indenture witnesseth that in pursuance of this covenant the said partnership business carried on under the name and style of be fully dissolved and that the partner No II shall not be made liable for any portion of the liabilities present or future of the said firm

Be it further stated that it is agreed that the retiring partner herein before called the Partner No I First Party shall not carry on any trade business within the town of within the next five years to come either in his own name or in any other name the good will of the present business under the arrangement between the parties passing solely to partner No II for his benefit In Witness whereof both the partners set their hands and seals to this Indenture on the day of the year mentioned at the outset

Signature of the Witnesses Signature of the Executants

Memo of consideration money paid by partner
No I to partner No II

Signature of the Witnesses Signature of the Executants

(F) LEASE

No 23 —Lease of a house (ordinary)

This Memorandum of Agreement made this
day of 19 Between Babu son of resident
of Thana in the District of by caste by
profession hereinafter called the **Landlord** of
the one part and Babu son of resident
of Thana in the District of by caste
by profession hereinafter called the **Tenant**
of the other part Witnesseth that the said **Landlord**
agrees to let and the said tenant agrees to take all
that messuage or dwelling house called the **Santi**
Villa situate at Street within the Calcutta
Municipality and butted and bounded on the north
by on the south by on the east by
on the west by standing on cottas of
land with out houses privies stables and courts for
term the of years commencing from the 1st
day of 19 at a monthly rental of Rs
payable on the 1st day of every succeeding
month **And the Tenant** agrees at the expiration of
the said period of tenancy to deliver all that piece
and parcel of the premises hereby let out in as good
a condition as the same are now reasonable wear
and tear excepted and it is further agreed that in
default of regular payment of rent on due date the
Landlord may re enter on the said premises after
giving 15 days notice terminating with a
and thereby determining this lease **In**

whereof the parties to these presents do hereunto set
 their respective hands and seals on the day
 of of the year 19

[Signature of the Landlord]

(Signature of the Tenant)

Signature of Witnesses

No 24—Permanent Lease of property

This Memorandum of Agreement made this
 day of 19 Between son of resident of
 Thana in the District of by caste by
 profession hereinafter called the **Landlord** of
 the **First Part** and Babu son of resident
 of thana in the District of by caste
 by profession hereinafter called the **Tenant** of the
Second Part Witnesseth that the said **Landlord**
 agrees to let and the said tenant agrees to take per
 manent lease of all that piece and parcel of revenue
 paying tenanted messuage land and hereditament
 containing by measurement more or less three acres
 sq ft of land in Subdivision

District and specifically mentioned in the Schedule
 annexed hereunto and bounded on the north by
 on the south by on the east by on the
 west by on payment of Rs 1000 as premium
 and on a fixed annual rental of Rs 200 payable by
 the said tenant to the said landlord in four equal
 instalments a year as shown in the Schedule (C) to
 this Indenture And this Indenture also Witnesseth
 that the rent of the property is fixed in perpetuity
 by this covenant and will not be enhanced by the
Landlord on any ground in any future time to

come The Landlord of the First Part simply reserves his right to get rent of the property from the Tenant of the Second Part *Let it be stated* that in case of a mine of mica coal or any other valuable mineral be subsequently discovered within the property leased out the same shall be the absolute property of the Landlord of the First Part and the Tenant of the Second Part will not be entitled to claim anything from the Landlord on that account And in the event of a discovery of a mine as stated above the tenant undertakes to give reasonable facility to the Landlord for sinking pit and installing machineries underground for working of the mine and shall get proportionate abatement of rent for surface land which may have to be occupied by the Landlord for the purpose

This Indenture also Witnesseth—that in case of acquisition of the property by Government or any other body before discovery of any such mine in the land, the Landlord will be entitled to get 25 times the rent reserved with statutory allowance and the balance of the compensation money will go to the Tenant Parties to this Indenture *also agree* that the tenant will pay Municipal tax in respect of the property and that the Landlord will not be responsible for the same *Be it also stated that* the arrears of rent, if any, that may [fall due from the Tenant to the Landlord in terms of the covenant will carry interest at 12% per annum *The parties to this deed accept the terms set forth above and agree that their representatives and assigns etc shall also be bound by the terms of this Agreement In Witness whereof the parties to this Indenture subscribe their hands and seals on the day of the year mentioned at the outset,*

Schedule (A)

Description of the property

Schedule (B)

Details of consideration money paid as premium

Schedule (C)

Details of rent annually Payable

*Signature of the Landlord**Signature of the Tenant**Signature of Witnesses***No 25 —Deed of Surrender of a Lease**

Know all men by these presents that I son
of resident of District by caste
by profession hereinafter called the **First Party**
and I son of resident of District
by caste by profession hereinafter called
the **Second Party** Whereas the **First Party** took a
lease of 100 bighas of land in the town of in
the District of specifically mentioned in the
Schedule of this deed from the **Second Party** for a
term of *five years* from the year 1925 for construction
of a jute godown which was necessary for the
First Party's business at an annual rental of by
an *Agreement* dated executed by **First Party**
in favour of the **Second Party**. AND Whereas the
said business of the said **First Party** has been wound
up by an order of the Subordinate Judge of Bombay
passed in Title Suit no 339 of 1927, the land mentioned
in this document is no longer necessary for use of
the **First Party** : And Whereas the **Second Party** in
consideration of the aforesaid facts and on receipt
of Rs 500/- as compensation has agreed that the

lease dated referred to before should terminate
it is agreed that the lease mentioned above is hereby
surrendered by the **First Party** in favour of the
Second Party and that the latter doth hereby accept
the said surrender and further acknowledges to have
received the sum of Rs 500/ as a consideration for
the said surrender as set forth above **And** the relation
ship of landlord and tenant in respect of the land
mentioned in the Schedule is finally and for all
times to come determined from this day and that the
Second Party shall be at liberty to take *Khas* posses-
sion of the said property and deal with it in any
way he thinks advantageous to himself **In Witness**
whereof the **First Party** and the **Second Party** subscribe
their hands and seals on the 5th day of January 1927
and agree to be bound by this deed of surrender

Schedule of Property

Signatures of the Executants

No 26 —General Power of Attorney *

Know all men by These presents that I son
of resident of Thana in the
District of by caste by profession
am possessed of estates in the Districts of
24 Parganas and Hughly and that as I have to live
at on business it is not possible for me to
manage my estates personally So I do hereby
nominate constitute and appoint Babu son
of of and Babu son of of
Thana . by caste by profession
my true and lawful attorneys to act on my behalf
and I authorise them to represent me in all Courts

*Five persons may be appointed to act under one power of Att

Civil Criminal and Revenue in Registration offices in Land Acquisition offices, and in the Collectorate Be it stated that any one of my attorneys named above shall have power to defend or prosecute all suits cases or proceedings in any of the places named above to sign and verify plaints and written statements and petitions on my behalf to appoint Vakils Solicitors Muktears for me, compromise cases, to withdraw money in deposit in Court or Revenue office and in fact to do all that may be necessary for proper conduct of cases and proceedings in my behalf I also authorise each of them to settle lands with tenants by fixing rents, to take *Kabuliyats* to grant *Pattas* on my behalf to present documents signed by me for registration in any registration office and admit execution of the same and to get them registered I moreover authorise each of my attorneys to collect rent and money due to my estate by granting receipts to file claims in Land Acquisition cases, to withdraw money from the Land Acquisition offices and Land Acquisition Courts to make reference in Land Acquisition cases to file appeals and to conduct my money and paddy lending business on my behalf in my name And acts, deeds, and things done by each of them shall be construed as acts, deeds, and things done by me personally and I do hereby ratify and agree to ratify and confirm all acts so done by my said attorneys In Witness whereof I do hereunto set my hand on this day
of 19

Witnesses

No 27 —Special power of Attorney to execute and Register a Document

To all to whom these presents shall come I
 on of of in the District of
 Send greeting Whereas it was agreed and proposed
 that I should convey premises No 55 St Peters
 Street Bombay, to Mr of in
 the District of for a sum of Rs ,
 and a draft of the proposed sale deed was drawn
 up and approved by my Vakıl and myself And
 Whereas it has become necessary for me to be away
 from Bombay on a call of business and it is not
 possible for me to execute and register the sale
 deed personally Now these Presents Witnesseth
 that I the said do hereby appoint my younger
 brother Mr to be my attorney to execute for
 me and in my name, and as my act and deed the
 deed to be engrosed from the draft approved by me
 in favour of Mr and I present the same for
 registration on my behalf before the Registrar of
 a copy of the said draft deed being appended
 hereunto as a Schedule to this deed In witness
 whereof I set my hand and seal unto these presents
 on the 17th day of the June of the year 1925

Signature of Witnesses

Signature

No 28 —Vakalatnama

In the Court of the Subordinate Judge 2nd Court,
 Alipur

Title Suit No 362 of 1924

Plaintiff

Defendant

Know all men by these presents that I de
 fendant in the above case do hereby in my name
 and in my behalf constitute and appoint Babu
 and Babu pleaders (or write
 pleaders named below) of this Court my true and
 lawful attorneys to appear and act for me in the
 above case (or in the aforesaid matter—when
 Vakalatnama has to be filed in a miscellaneous
 matter) and in connection herewith and for that
 purpose to do all acts whatsoever in that connec-
 tion including depositing or drawing moneys filing
 in or taking out papers from Court in my behalf
 and I do hereby agree to ratify and confirm all
 acts so done by the said pleaders as my own act
 and as if done by me to all intents and purposes

In Witness whereof I do hereunto set my hand
 and seal on the 23rd of June 1915

Witnesses

Signature

A B—If the Vakalatnama is not filed in any
 case—the Vakalatnama should be styled— In the
 matter of instead of giving description of
 the suit

For rules of acceptance of Vakalatnamas—See
 Part IV Chapter I on L P Act

No 29.—Testamentary Documents, Wills Etc

Know all men by These presents that I son
 of resident of District by
 caste by profession being in a bad
 state of health and being desirous of making provi-
 sions as regards my properties after my death do

hereby execute this my last Will being in possession of my full senses I have two sons, one widowed daughter and my wife My first son Sreeman is aged 20 years he is prosecuting his studies in the Presidency College I do hereby give a 6 annas share in my properties to my said son Sreeman

My second son Sreeman is 15 years old, he is dull in understanding and, I am afraid, may not be able to earn a decent livelihood in future In consideration of his intellectual debility and as also of the fact that he is my last born child and I am specially fond of him, and I give, half of my properties to my said son Sreeman

My daughter Sreemati became a widow at the age of 20, some 7 years ago, and she has not inherited any property whatsoever from her husbands' side, and so I bequeath a two annas interest in my properties to my said widowed daughter Sreemati

She will absolutely get the said two annas share after my death and will be at liberty to sell or dispose of in any way she may please, the share assigned to her My wife Sreemati will get Rs 50 per month as maintenance from the estate and the said payment shall be a charge on my estate and my sons and daughter will be bound to pay the said maintenance to my wife in proportion to the shares of my property in their hands I do hereby appoint my wife Sreemati

Executrix to my Will My wife so long as she shall be alive will be *Executrix* to my Will and will take probate of this Will and administer my properties In case she does not survive me, my eldest son Sreeman . will take probate of this Will and I do hereby appoint him *Executor* for

purpose Be it understood that during my wife's life-time my eldest son will not be entitled to take probate of the Will and to act as an executor

In witness whereof I do hereunto set my hand and seal on the day of 1912
[Signature of the testator]

The testator knowing the contents of this Will signed it in our presence

Signature of Witnesses

No. 30.—Mahomedan Will

Know all men by These presents that I Syed Ali Son of resident of Thana District make this my last Will and Testament and that it shall be operative after my death unless revoked, altered or cancelled by a subsequent will or codicil. I have become old and am suffering from disease off and on and have become very weak And so I think it desirable to execute a Will at this stage of my life I have got one wife Mussamat and two sons Maulavi and Maulavi and one daughter Mussamat The estate I am possessed of is worth about Rs 6000/- as per valuations of the different items mentioned in the Schedule (A) annexed hereunto Be it here stated that I have debts to the extent of Rs 900/- as per details mentioned in Schedule (B) So the net worth of my property at present is Rs 5100/- Under the Mahomedan law, I have power to bequeath my properties only to the extent of one third i.e. to the extent of properties worth Rs 1700/.

and the remainder of my properties will go to my legal heirs according to their prescribed shares I adopted Munshi Ameer Ali as my son when he was quite an infant and gave him fair education He has no near relations, out of affection for the poor boy who has been under my care for the last 12 years, I bequeath him property worth Rs 1000/- mentioned in the Schedule (C) and he will get that property absolutely with power of alienation I also bequeath property worth Rs 700/- mentioned in Schedule (D)—over which I have disposing power—to the Matwali of the Jumma *Musjid* at Alipore in the district of Cawnpore, with specific direction that the income of the said property will be spent by the said Matwali every year in feeding the poor at the time of the Muharram Be it known that I do hereby appoint my eldest son Maulavi _____ as Executor for taking probate of this Will and for administering this property bequeathed in terms of the Testament In witness whereof I set my hand hereunto this day of _____ of the year _____

Schedule (A) (Value of entire property)

Schedule (B) (Debts)

Schedule (C) (Property bequeathed to Amir Ali)

Schedule (D) (Property bequeathed to the *Masjid*)

Scribe and witness

Witness

*Signature of the
Executor*

No 31.—Codicil

Know all men by These Presents that I _____ son
of _____ resident of _____ District _____ executed my
last Will and Testament on the day _____ of _____ of _____

purpose. Be it understood that during my wife's life-time my eldest son will not be entitled to take probate of the Will and to act as an executor

In witness whereof I do hereunto set my hand and seal on the day of 1912
[Signature of the testator]

The testator knowing the contents of this Will signed it in our presence.

Signature of Witnesses

No. 30.—Mahomedan Will

Know all men by These presents that I Syed Ali Son of resident of Thana District make this my last Will and Testament and that it shall be operative after my death unless revoked, altered or cancelled by a subsequent will or codicil. I have become old and am suffering from disease off and on and have become very weak And so I think it desirable to execute a Will at this stage of my life I have got one wife Mussamat and two sons Maulavi and Maulavi and one daughter Mussamat The estate I am possessed of is worth about Rs 6000/- as per valuations of the different items mentioned in the Schedule (A) annexed hereunto Be it here stated that I have debts to the extent of Rs 900/- as per details mentioned in Schedule (B) So the net worth of my property at present is Rs 5100/- Under the Mahomedan law, I have power to bequeath my properties only to the extent of one third i.e. to the extent of properties worth Rs 1700/-

and the remainder of my properties will go to my legal heirs according to their pre-erited shares. I adopted Munshee Ameer Ali as my son when he was quite an infant and gave him fair education. He has no near relations out of affection for the poor boy who has been under my care for the last 12 years. I bequeath him property worth Rs 1000/- mentioned in the Schedule (C) and he will get that property absolutely with power of alienation. I also bequeath property worth Rs 700/- mentioned in Schedule (D)—over which I have disposing power—to the Matwali of the Jumma Masjid at Alipore in the district of Cawnpore with specific direction that the income of the said property will be spent by the said Matwali every year in feeding the poor at the time of the Muharram. Be it known that I do hereby appoint my eldest son Maulavi _____ as Executor for taking probate of this Will and for administering this property bequeathed in terms of the Testament. In witness whereof I set my hand hereunto this day of _____ of the year _____

Schedule (A) (Value of entire property)

Schedule (B) (Debts)

Schedule (C) (Property bequeathed to Amir Ali)

Schedule (D) (Property bequeathed to the Masjid)

Scribe and witness

Witness

*Signature of the
Executor*

No 31.—Codicil

Know all men by These Presents that I _____ of _____ resident of _____ District _____ executed last Will and Testament on the day _____ of _____

the year and do execute this **Codicil to the said Last Will and Testament** modifying the terms of the said will as stated hereinafter —

- 1 That
- 2 That
- 3 That

Now this deed of **Codicil Witnesseth** that my aforesaid **Last Will and Testament** shall stand modified by the terms of this codicil and I declare that the said **Will** so modified shall be construed to be my **Last Will and Testament** And I do hereby confirm the said **Will** in all other respects subjects to the modifications made herein In **Witness where** of I set my hand and Seal to this codicil on this day of of the year

Signature of witnesses

Signature of Executant

- 1
- 2
- 3

No 32 —Revocation of a Will

To all to whom These Presents shall come,
I son of resident of District
send greeting Whereas I executed my **Will and Testament** on during my last illness bequeathing my properties in favour of my two sons Mr and Mr and my wife Mrs giving each equal shares And Whereas after the execution of the said **Will** a son was born to me on who has been named Master And Whereas I think it desirable to make some provisions for my last born child And Whereas I intend to make a gift of money and properties also to the Benevolent Society of Allahabad

which I consider to be a pious act in my old age I do hereby revoke my Will dated _____, a copy whereof is annexed hereunto as Schedule to this deed. Be it known that I intend to make a fresh Will as soon as practicable and also to execute a *Deed of Dedication* in favour of the aforesaid Benevolent Society. In witness whereof I do set my hand and seal unto these presents this day of _____ of the year _____

Signature of Witness

1

Signature of the Executant

2

3

No 33 — Authority to a wife to adopt a son.

Know all men by these presents that I _____ son of _____ resident of _____ thana _____ District do execute This Deed on the 9th of June 1927 in favour of my only wife Sreemati _____ authorising her to adopt a boy, below twelve years of age of my caste, after my death in terms hereinafter set forth in the Deed. I have become old and have no issue male or female whatsoever. I have some properties self-acquired and ancestral, which may be lost to my family unless my line is perpetuated by authorising my wife _____ to adopt a suitable boy as my son after my demise. Besides, I am an orthodox Hindu, and believe that spiritual benefits can be conferred on my soul after my death by performance of my *Sradh* by my said adopted son according to the Shrastic rites. These considerations have led me to execute this Deed in favour of my wife and I authorise her, by these Presents to take a boy of the description set forth above in adoption as my son, within 5 years after my death, by performing the

the year and do execute this **Codicil** to the said **Last Will and Testament** modifying the terms of the said will as stated hereinafter —

- 1 That
- 2 That
- 3 That

Now this deed of **Codicil** Witnesseth that my aforesaid **Last Will and Testament** shall stand modified by the terms of this codicil and I declare that the said **Will** so modified shall be construed to be my **Last Will and Testament** And I do hereby confirm the said **Will** in all other respects subjects to the modifications made herein In Witness whereof I set my hand and Seal to this codicil on this day of _____ of the year _____

Signature of witnesses *Signature of Executant*

- 1
- 2
- 3

No 32 —Revocation of a Will

To all to whom These Presents shall come, I son of _____ resident of _____ District send greeting Whereas I executed my **Will and Testament** on _____ during my last illness bequeathing my properties in favour of my two sons Mr _____ and Mr _____ and my wife Mrs _____ giving each equal shares And Whereas after the execution of the said **Will** a son was born to me on _____ who has been named Master _____ And Whereas I think it desirable to make some provisions for my last born child And Whereas I intend to make a gift of money and properties also to the Benevolent Society of Allahabad

which I consider to be a pious act in my old age I do hereby revoke my Will dated , a copy whereof is annexed hereunto as Schedule to this deed. Be it known that I intend to make a fresh Will as soon as practicable and also to execute a *Deed of Dedication* in favour of the aforesaid Benevolent Society. In witness whereof I do set my hand and seal unto these presents this day of of the year

Signature of Witness

1 .

Signature of the Executant

2

3

No 33 — Authority to a wife to adopt a son.

Know all men by these presents that I son of resident of thana District do execute This Deed on the 9th of June 1927 in favour of my only wife Sreemati authorising her to adopt a boy, below twelve years of age of my caste, after my death in terms hereinafter set forth in the Deed. I have become old and have no issue male or

adopt a suitable boy as my son after my demise. Besides, I am an orthodox Hindu, and believe that spiritual benefits can be conferred on my soul after my death by performance of my *Sradh* by my said adopted son according to the Shrastic rites. These considerations have led me to execute this Deed in favour of my wife and I authorise her, by these Presents to take a boy of the description set forth above in adoption as my son, within 5 years after my death, by performing the

the year and do execute this **Codicil to the said Last Will and Testament** modifying the terms of the said will as stated hereinafter —

1 That

2 That

3 That .

Now this deed of **Codicil Witnesseth** that my aforesaid **Last Will and Testament** shall stand modified by the terms of this codicil and I declare that the said **Will** so modified shall be construed to be my **Last Will and Testament** And I do hereby confirm the said **Will** in all other respects subjects to the modifications made herein In **Witness where-** of I set my hand and Seal to this codicil on this day of of the year

Signature of witnesses

Signature of Executant

1

2

3

No. 32 —Revocation of a Will.

To all to whom These Presents shall come,
I son of resident of District
send greeting Whereas I executed my **Will and Testament** on during my last illness bequeathing my properties in favour of my two sons Mr and Mr and my wife Mrs giving each equal shares And Whereas after the execution of the said Will a son was born to me on who has been named Master And Whereas I think it desirable to make some provisions for my last born child And Whereas I intend to make a gift of money and properties also to the Benevolent Society of Allahabad

which I consider to be a pious act in my old age I do hereby revoke my Will dated a copy whereof is annexed hereunto as Schedule to this deed Be it known that I intend to make a fresh Will as soon as practicable and also to execute a *Deed of Dedication* in favour of the aforesaid Benevolent Society In witness whereof I do set my hand and seal unto these presents this day of of the year

Signature of Witness

1

Signature of the Executant

2

3

No 33 — Authority to a wife to adopt a son

Know all men by these presents that I son of resident of thana District do execute This Deed on the 9th of June 1927 in favour of my only wife Sreemati authorising her to adopt a boy below twelve years of age of my caste after my death in terms hereinafter set forth in the Deed I have become old and have no issue male or female whatsoever I have some properties selfacquired and ancestral which may be lost to my family unless my line is perpetuated by authorising my wife to adopt a suitable boy as my son after my demise Besides I am an orthodox Hindu and believe that spiritual benefits can be conferred on my soul after my death by performance of my *Sradh* by my said adopted son according to the Shrastic rites These considerations have led me to execute this Deed in favour of my wife and I authorise her by these Presents to take a boy of the description set forth above in adoption as my son within 5 years after my death by performing the

the year and do execute this **Codicil** to the said **Last Will and Testament** modifying the terms of the said will as stated hereinafter —

1 That

2 That

3 That

Now this deed of **Codicil** Witnesseth that my aforesaid **Last Will and Testament** shall stand modified by the terms of this codicil and I declare that the said **Will** so modified shall be construed to be my **Last Will and Testament** And I do hereby confirm the said **Will** in all other respects subjects to the modifications made herein In Witness whereof I set my hand and Seal to this codicil on this day of _____ of the year _____

Signature of witnesses

Signature of Execut^{int}

1

2

3

No 32 —Revocation of a Will

To all to whom These Presents shall come, I _____ son of _____ resident of _____ District send greeting Whereas I executed my **Will and Testament** on _____ during my last illness bequeathing my properties in favour of my two sons Mr _____ and _____ Mr _____ and my wife Mrs _____ giving each equal shares And Whereas after the execution of the said **Will** a son was born to me on _____ who has been named Master _____ And Whereas I think it desirable to make some provisions for my last born child And Whereas I intend to make a gift of money and properties also to the Benevolent Society of Allahabad

which I consider to be a pious act in my old age I do hereby revoke my Will dated a copy whereof is annexed hereunto as Schedule to this deed Be it known that I intend to make a fresh Will as soon as practicable and also to execute a *Deed of Dedication* in favour of the aforesaid Benevolent Society In witness whereof I do set my hand and seal unto these presents this day of of the year

Signature of Witness

1

Signature of the Executant

2

3

No 33 — Authority to a wife to adopt a son.

Know all men by these presents that I son of resident of thana District do execute This Deed on the 9th of June 1927 in favour of my only wife Sreemati authorising her to adopt a boy below twelve years of age of my caste after my death in terms hereinafter set forth in the Deed I have become old and have no issue male or female whatsoever I have some properties self acquired and ancestral which may be lost to my family unless my line is perpetuated by authorising my wife to adopt a suitable boy as my son after my demise Besides, I am an orthodox Hindu, and believe that spiritual benefits can be conferred on my soul after my death by performance of my *Sradh* by my said adopted son according to the Shrastic rites These considerations have led me to execute this Deed in favour of my wife and I authorise her, by these Presents to take a boy of the description set forth above in adoption as my son, within 5 years after my death, by performing the

the year and do execute this **Codicil to the said Last Will and Testament** modifying the terms of the said will as stated hereinafter —

1 That

2 That

3 That

Now this deed of **Codicil Witnesseth** that my aforesaid **Last Will and Testament** shall stand modified by the terms of this codicil and I declare that the said **Will** so modified shall be construed to be my **Last Will and Testament** And I do hereby confirm the said **Will** in all other respects subjects to the modifications made herein In **Witness where-** of I set my hand and Seal to this codicil on this day of of the year

Signature of witnesses

Signature of Executant

1

2

3

No 32 —Revocation of a Will

To all to whom These Presents shall come, I son of resident of District send greeting Whereas I executed my Will and Testament on during my last illness bequeathing my properties in favour of my two sons Mr and Mr and my wife Mrs giving each equal shares And Whereas after the execution of the said Will a son was born to me on who has been named Master And Whereas I think it desirable to make some provisions for my last born child And Whereas I intend to make a gift of money and properties also to the Benevolent Society of Allahabad

which I consider to be a pious act in my old age I do hereby revoke my Will dated _____, a copy whereof is annexed hereunto as Schedule to this deed. Be it known that I intend to make a fresh Will as soon as practicable and also to execute a *Deed of Dedication* in favour of the aforesaid Benevolent Society. In witness whereof I do set my hand and seal unto these presents this day of _____ of the year

Signature of Witness

1 .

Signature of the Executant

2

3

No 33 — Authority to a wife to adopt a son.

Know all men by these presents that I _____ son of _____ resident of _____ thana _____ District do execute This Deed on the 9th of June 1927 in favour of my only wife Sreemati _____ authorising her to adopt a boy, below twelve years of age of my caste, after my death in terms hereinafter set forth in the Deed. I have become old and have no issue male or female whatsoever. I have some properties self acquired and ancestral, which may be lost to my family unless my line is perpetuated by authorising my wife _____ to adopt a suitable boy as my son after my demise. Besides, I am an orthodox Hindu, and believe that spiritual benefits can be conferred on my soul after my death by performance of my *Sradh* by my said adopted son according to the Shrastic rites. These considerations have led me to execute this Deed in favour of my wife and I authorise her, by these Presents to take a boy of the description set forth above in adoption as my son, within 5 years after my death, by performing the

usual Shastric ceremonies. The said boy, after the adoption, will inherit my properties as my son ; and my wife will be his guardian during his minority and manage the properties to the best of her judgment. Should it so happen that the adopted son die childless and unmarried, my wife is also authorised to take a second similar boy in adoption, within two years from the time of death of the *first adopted child*. Be it further stated that my wifewill be entitled to an allowance of Rs. 100/- per month from my estate, even after the adoption, for her maintenance and for meeting the cost of her pilgrimage and performance of such religious rites as she may be advised by her spiritual preceptor. In witness whereof etc. (as in No. 1) .

.....
Signature of the Executant.

Signature of the Witnesses.

1.
2.
3.

(I) MISCELLANEOUS.

No. 34.—Talknama (Deed of Mahomedan Divorce)

Know all men by these presents that I.....son of.....resident of.....Thana.....District.....by profession.....married Mussamat.....daughter ofon the 13th day of Nov. 1923, and that dower for the marriage was settled at Rs. 2000/- ; and that I gave ornaments worth of Rs. 1000/- to my said wife on account of the prompt portion of the Dower on the date of the marriage and agreed to pay the balance of Rs. 1000/- i.e. the deferred portion of the dower at a subsequent date according to my convenience. It so happened, through the grace of the

Almighty, that I was compelled to marry a second wife subsequently and from that time and onwards feeling between myself and my said first wife Mussamat gradually began to be worse and it became quite impossible for me to live with my said first wife I decided to divorce my 1st wife the aforesaid and pronounced Talak three times on and divorced her Also paid her the balance of Rs 1000/ due to her on account of the deferred Dower money and got a duly stamped receipt therefor The aforesaid Mussamat after that demanded a registered Talaknama from me stating the reason for the divorce to enable her to re marry and acquire a status suitable to her father's position in society I having considered the proposal reasonable and just do hereby execute this Deed of Divorce affirming the Talak that I gave the other day and in confirmation of the same Be it stated that I undertake to pay to Mussamat monthly allowance of Rs 50/ from this month and till the period of Iddat i.e during the period of time she cannot re marry under the Mahomedan Law Be it further known that I voluntarily execute this Deed of Divorce without any pressure from any body and undertake to be bound by its terms I hereunto affix my signature to this Talaknama in presence of the witnesses named below on the 7th day of January of 1927

Signature of the executant

Signature of the Witnesses

1

2

3

**No. 35.—Application to the landlord for mutation
of name by purchaser of a permanent
transferable right.**

To.....

of.....

.....(Landlord)

The humble petition of.....of.....

Most respectfully sheweth :—

(1) That there is a holding of 30 acres of land in village——Mouja——within your Zemindary at a rental of Rs. 120/- a year, and held by Mr..... under you as your a tenant.

(2) That the said tenant Mr.....sold the said holding to your petitioner by a registered *kobala* dated.....for a sum of Rs. 5000/- and put him in possession thereof. A true copy of the *kobala* is annexed herewith, and the original will be produced if called upon to do so.

(3) That the said tenant Mr.....had permanent transferable interest.....in the holding in terms of a registered lease executed by your father the late Mr.....

(A copy of the said lease is attached hereto for facility of reference in your office)

Your petitioner prays :—

(1) That you may be pleased to recognise your petitioner's purchase and register his name in your office in place of the old tenant Mr.....

(2) That you may be pleased to accept rent from your petitioner in respect of the said property.

And your petitioner as in duty bound shall ever
pray

Bombay }
5 9 29 }

Signature

CHAPTER I (A)

NOTICES

No 1 —Notice by a tenant to his landlord
for determination of a lease

To

Mr

of

(Landlord)

I do hereby give you notice that in terms of the Indenture of Lease dated between you and me in respect of the property mentioned in the Schedule given below, I have been holding the property under you as your tenant at an annual rental (or monthly rental of) and that it was agreed on between ourselves in the said lease that the lease might be determined by any of the parties thereto by giving months notice to the other. Now in exercise of the said powers of election I give you months notice of my intention to determine the lease. So the said lease between you and me will be finally determined and the relationship of landlord and tenant between you and me will finally cease on the expiry of the time of this

notice—when I vacate the premises and deliver unto you possession thereof

Dated } *Signature of the tenant or his attorney*
 } **Schedule to this notice**

Signature of the tenant or his agent

**No. 2 —Notice to quit by a landlord to
 a tenant from year to year.**

To

(Tenant)

You are required to quit and deliver possession of the messuages etc specifically described in the schedule, and which you hold under me as my tenant unto me on the——day of——of 1928

Punjab }
 Dated } *Signature of the landlord or
 his agent*

Schedule of property.

[As in No 1 Conveyance]

N B—Six months' notice ending with the year of the tenancy is necessary

**No. 3 —Notice to quit by a tenant from year to
 year to the Landlord**

To

(Landlord)

I do hereby give you notice that 'I shall quit and deliver possession unto you of the property'

described in the Schedule hereunto annexed
and which I hold under you as a yearly tenant at the
end of the year of my tenancy i e on the
day of .

Bombay	}	<i>Signature of the tenant or his attorney</i>
Dated		

Schedule of property.

N. B—Six months' notice ending with the year
of the tenancy is necessary

No. 4—Notice upon a Municipality of intention
of bringing a suit

From

Mr

To

The Chairman of the Commissioners of the
Bhagalpore Municipality

Dated, Bhagalpore, the

Dear Sir,

I beg to inform you that while passing in my
carriage through Camack Street, at about 9 P M,
on (date), within your Municipality, my horse
fell into a pit on the road just to the East of the
Weslyan Church and the right foreleg of the horse
was badly damaged, requiring immediate removal
of the creature to the local Veterinary Hospital,
where he was detained for 15 days, and I had to
pay a bill sent by the said Hospital amounting to
Rs 100/- In addition to this, I had to incur an
expenditure of Rs 150/ , on account of conveyance
hire, for the days my horse remained unfit at the

described in the Schedule hereunto annexed
and which I hold under you as a yearly tenant at the
end of the year of my tenancy i e on the
day of .. .

Bombay	}	<i>Signature of the tenant or his attorney</i>
Dated		

Schedule of property.

N. B—Six months' notice ending with the year
of the tenancy is necessary

No. 4—Notice upon a Municipality of intention
of bringing a suit.

From

Mr

To

The Chairman of the Commissioners of the
Bhagalpore Municipality

Dated, Bhagalpore, the

Dear Sir,

I beg to inform you that while passing in my carriage through Camack Street, at about 9 P. M., on (date), within your Municipality, my horse fell into a pit on the road just to the East of the Wesleyan Church and the right foreleg of the horse was badly damaged, requiring immediate removal of the creature to the local Veterinary Hospital, where he was detained for 15 days, and I had to pay a bill sent by the said Hospital amounting to Rs 100/-. In addition to this, I had to incur an expenditure of Rs 150/, on account of conveyance hire, for the days my horse remained unfit at the

described in the Schedule hereunto annexed and which I hold under you as a yearly tenant at the end of the year of my tenancy i e on the day of

Bombay }
Dated }

*Signature of the tenant
or his attorney*

Schedule of property.

N B—Six months' notice ending with the year of the tenancy is necessary

No. 4—Notice upon a Municipality of intention of bringing a suit

From

Mr

To

The Chairman of the Commissioners of the
Bhagalpore Municipality

Dated, Bhagalpore, the

Dear Sir,

I beg to inform you that while passing in my carriage through Camack Street, at about 9 P M, on (date), within your Municipality, my horse fell into a pit on the road just to the East of the Wesleyan Church and the right foreleg of the horse was badly damaged, requiring immediate removal of the creature to the local Veterinary Hospital, where he was detained for 15 days, and I had to pay a bill sent by the said Hospital amounting to Rs 100/- In addition to this, I had to incur an expenditure of Rs 150/, on account of conveyance hire, for the days my horse remained unfit at the

Hospital. The above accident was brought about by the negligence of your employees who should have fenced the pit and put a light near it as a signal that the road was under repairs.

In these circumstances, I would request you to be good enough to send me a cheque for Rs 250/- to reimburse my out-of-pocket expenditure as noted above. Please note, that in case you fail to comply with my request, I shall have no other alternative but to bring a suit in a proper Court against the Municipality for recovery of the amount after expiry of——months (here mention the period of notice required under the local Municipal Act) from the date of receipt of this letter.

Yours faithfully

Signature of the claimant.

N. B.—Pleaders giving notice behalf of their clients should address a letter on this line, making alterations to fit in with the circumstances of the case.

No. 5.—Notice to a Railway Company claiming damages for loss of goods.

From.....

To

The Agent,

The East Indian Railway, Howrah.

Dated, Calcutta the.....of.....19...

Dear Sir,

I have the honour to state that I sent 14 packages containing.....from Cawnpore to Howrah by taking Risk-note form.....I took delivery of the articles

at Howrah on (date), less three packages which were found short, and the said fact was brought to the notice of the Goods Superintendent, Howrah, and I obtained from him a certificate to the above effect. I also noted the same fact at the back of the receipt which was made over to the Goods Clerk at the time of taking delivery. The three missing packages contained goods worth Rs So I request you to entertain my claim for the said amount, and send me a cheque for it at your earliest convenience—failing compliance with the request herein made, I shall have to bring a suit for damages amounting to Rs against your Railway, after the expiry of 6 months from the date of receipt of this notice.

Yours faithfully

(*Signature of the claimant*)

No. 6 —Notice by one partner to another to determine a partnership business in terms of partnership deed.

To
of

(A partner of the firm of Messrs
carrying business at)

Dear Sir,

Pursuant to the terms of the partnership deed executed between you and me on the 9th day of January, 1915, you and I carried on a joint business under the name and style of Messrs from the above date and up till now. Power is reserved to any of the partners to determine his

nection with the said partnership business at any time by giving six months' notice to the other partner. Now, in election of the said power, I hereby give you notice of my intention to cut off my connections with the joint business which is being carried on between you and me. Be it noted that six calendar months will be computed from this date.

Madras. }
June.....19 }

Yours faithfully,

Signature of the Partner.

No. 7.—Notice of assignment of a mortgage to the Mortgagor by the original Mortgagee.

To.....

.....(Mortgagor)

Please take notice that I assigned the mortgage bond executed by you in my favour on the..... (date).....of the year.....to Mr.....of.....on the.....date by a registered instrument. All dues under the aforesaid mortgage bond should henceforth be paid to said Mr.....or his executors, assignees or administrators or successors-in-interest, as I divested myself of all the rights and claims under the bond by virtue of the aforesaid assignment.

Dated, Lucknow, }

the.....May, 19 }

Mortgagee. ;

**No 8 —Notice of assignment of a mortgage bond
to the Mortgagor by the Assignee of
the said bond.**

To

(Mortgagor)

Please take notice that the mortgage bond which had been executed by you in favour of Mr of village, P S on the day of 19 was assigned to me on the day of 19 by a registered instrument whereby Mr ,the original mortgagor divested himself of all rights title and interest under the said bond All dues under the aforesaid bond should henceforward be paid unto me and that any payment made in respect of the bond in question to the original mortgagee after receipt hereof, would be at your risk and peril

Dated Lucknow }
the of 19 }

*Signature of the assignee of
the mortgage bond*

**No 9 —Notice to the Mortgagee by the Mortgagor
intimating intention to repay**

To

of (Mortgagee)

Please take notice that I intend to pay off your dues under the mortgage bond executed by me in your favour on (date) the time for payment having expired long before this I would request you to be good enough to send an up-to date account showing your dues on account of the principal and

interest, after crediting payments made to you from time to time On examination of the accounts I shall let you know if I find it correct, and thus ask you to fix a time and place when and where you can accept the payment and make over to me the mortgage bond together with the title deeds metioned therein, and also execute a bond of reconveyance of the property in my favour

Dated, Rawalpindi

The

19

}

Signature of the Mortgagor
Address

No 10 —Notice of Ejectment through a Pleader
(Section 106 of the T P Act)

Calcutta
dated

To

Dear Sir,

Under instructions from my client of I hereby give you notice that you are to quit and vacate the premises described below (of which you are now in possession as a monthly or yearly tenant under my said client) immediately after the 31st day of of (in case of monthly tenancy give 15 days notice ending with the last day of a month and in case of a yearly tenant give 6 months notice ending with the year) and on and from the 1st of (month next following the last day of the month on which the tenant is required to quit) the lease heretofore subsisting shall terminate and all relationship of land lord and tenant between you and my client shall absolutely cease You are accordingly requested to

deliver possession of the said premises unto my client
 In case of your failure to quit the premises as desired,
 you will be considered as a trespasser during the
 period of your overstay and you will have to pay
 damages at the rate of Rs . . .per diem until you
 are evicted in due course of law.

Description of the
 premises

Yours faithfully,

.....

Pleader.

No. 11.—Pleader's letter of demand.

Berhampur,

Dated

To

Dear Sir,

Under instructions from my client .. .of .. .I
 hereby beg to demand of you payment of the sum of
 Rs .. ,due to my said client on account of (state on
 what account the said money is due), and request you
 to be good enough to remit the said amount either
 to me or to my said client, within 5 days from the
 date of receipt of this letter. In default of payment,
 I have instructions to take legal proceedings against
 you without further reference.

Yours faithfully,

... ..

Pleader.

**No. 12.—Notice of Ejectment to be served on
an under-raiyat.**

Howrah,

Dated, the 15th of Bhadro, 1318.

To

... ..

Dear Sir,

I hereby give you notice that you are to quit and vacate the holding described below which you hold under me as an under-raiyat at an annual rental of Rsasimmediately after the expiration of the next agricultural year, *i. e.* on the 30th of Chait 1319 B S., when¹ all relationship of landlord and tenant subsisting¹ between you and me shall cease and determine and in case of your overstay you will be considered a trespasser.

Description of the holding
with boundaries.

Yours faithfully,

.....

Signature.

N. B.—This notice is to be served through the Court, see section 49 of the B. T. Act; see also Bengali Part page 281, and 23 C. W. N. 76.

—————

PART VII.

CHAPTER II.

ALL INDIA STAMP LAW

Containing

Duties payable on important documents

IN

All the Provinces in India and shewing
the amendments made

BY

THE LOCAL ACTS.

**Stamp Duties payable on important documents
in different Provinces in British India.**

1 Acknowledgment of a debt exceeding Rs 20/-
One anna

2. Administration Bond—(1) where the amount does not exceed Rs 1000/- *Duty same as on a bond.*

(ii) in any other case—*Rupees five*

Recent changes (in cl. ii) by Local Acts.

Assam Bengal Bombay C P Madras Punjab U P
Rs 10/- Rs 10/- Rs 10/- Rs 10/- Rs 10/- Rs 10/- Rs 10/-

3 Adoption Deed—*Ten rupees*

Recent changes by Local Acts.

Assam Bengal Bombay C P Madras Punjab. U. P.
Rs 20/- Rs 20/- Rs 20/- Rs 20/- Rs 15/- Rs 20/- No
Change.

4 Affidavit—*One Rupee.*

Recent changes by Local Acts.

Assam Bengal Bombay. C P Madras. Punjab U. P.
Rs 2/- Rs 2/- Rs 2/- Rs 2/- Rs 2/- Rs 2/- Rs 2/-

*Exemptions—*Affidavit or declaration in writing when made (a) as a condition of enlistment under the Indian Articles of War, (b) for the immediate purpose of being filed in Court and (c) for receiving pension

5 Agreement—(a) *For sale of Govt. securities—*one anna for every Rs 10,000/- or part thereof, subject to a maximum of Rs 10/- [For Local Amendment—see Amending Acts]

(b) If not otherwise provided for (Not relating to bill of Exchange)—Eight annas

Recent Changes in cl (b) by Local Acts

Assam Bengal Bombay C P Madras Punjab U P
As 12/ As 12/ Re 1/ Re 1/ As 12/ Re 1/ As 12/

(For exceptions see under Art 5 Stamp Act)

6 Appointment in execution of a power—
whether of trustee or of property not by a will—
Rupees Fifteen

Recent changes by Local Acts

Assam	Bengal	Bombay	C P	Madras	Punjab	U P
Rs 25/	Rs 25/	of trustees	No	Rs 25/	Rs 25/	Rs 15/ up
		Rs 15/ in change				to proper
		any other				ty worth
		case Rs				Rs 1000/
		30/				in any
						other case
						Rs 25/

7 Articles of Association of a Company—*Rupees*
Twenty five

Recent change by Local Acts

Assam	Bengal	Bombay	C P	Madras	Punjab	U P
	7/	(a) Share Capital	Rs 50/	Rs 50/	Share Capital	Rs 50/
All th		upto Rs 2500			upto Rs	
		—Rs 25			100 000	
		(b) Over Rs			—Rs 25	
		2500/ up to			in any	
		s 100 000—			other	
		50/			case Rs	
		in any			50/	
		case				
		9/				

THE L respect of property up to
in a Bond

Five rupees

cl (b) by Local Acts

ASSAM.

(a) Over Rs. 1000/- to Rs. 5000/- *Seven rupees eight annas.*

(b) for every additional Rs 1000/- or part thereof in excess of Rs. 5000/- *Eight annas, subject to a maximum of fifty rupees.*

Bengal and the Punjab

Same as in Assam

Madras

(a) Up to Rs 1000/ duty as on Bottomry Bond

(b) Over Rs 1000/- up to Rs 5000/- *Ten rupees*

(c) for every additional Rs 1000/- or part thereof in excess of Rs 5000/—*Eight annas, subject to a maximum of fifty rupees*

Bombay

Duty same as on a Bond subject to a maximum of *Twenty Rupees*

U. P

(a) Up to Rs 1000/ duty as on Bond

(b) Above Rs 1000/ and up to Rs 5000/-—*Seven rupees eight annas*

(c) in any other case—*Ten rupees*

C. P.

(12) (a) Up to Rs 1000/- *same as Bond*

12 (b) In any other case—*Seven rupees, eight annas.*
9 Bond

Class**Duty**

(A) where the amount or value secured does not exceed Rs 10,	} Two annas.
(B) where it exceeds Rs 10 and does not exceed Rs 50,	
	} Four annas.

Class	Duty
(C) where it exceeds Rs 50 and } does not exceed Rs 100	Eight annas
(D) where it exceeds Rs 100 and } does not exceed Rs 200	One Rupee
(E) where it exceeds Rs 200 and } does not exceed Rs 300 ,	One rupee eight annas
(F) where it exceeds Rs 300 and } does not exceed Rs 400	Two rupees
(G) where it exceeds Rs 400 and } does not exceed Rs 500	Two rupees eight annas
(H) where it exceeds Rs 500 and } does not exceed Rs 600	Three rupees
(I) where it exceeds Rs 600 and } does not exceed Rs 700	Three rupees eight annas
(J) where it exceeds Rs 700 and } does not exceed Rs 800 ,	Four rupees
(K) where it exceeds Rs 800 and } does not exceed Rs 900	Four rupees eight annas
(L) where it exceeds Rs 900 and } does not exceed Rs 1 000	Five rupees
(M) and for every Rs 500 or part } thereof in excess of Rs 1 000	Two rupees eight annas

After Recent Changes by Local Acts

Class	Assam			Bengal			Bombay			C P			Madras			Punjab			U P		
	R	A	P	R	A	P	R	A	P	R	A	P	R	A	P	R	A	P	R	A	P
(A)	0	2	0	0	2	0	0	2	0	0	2	0	0	2	0	0	2	0	0	2	0
(B)	0	4	0	0	4	0	0	4	0	0	4	0	0	4	0	0	4	0	0	4	0
(C)	0	8	0	0	8	0	0	8	0	0	8	0	0	8	0	0	8	0	0	8	0
(D)	1	0	0	1	0	0	1	0	0	1	0	0	1	4	0	1	0	0	1	0	0
(E)	1	14	0	1	14	0	2	4	0	1	14	0	1	14	0	1	14	0	1	14	0
(F)	2	8	0	2	8	0	3	0	0	2	8	0	2	8	0	2	8	0	2	7	0
(G)	3	2	0	3	2	0	3	12	0	3	2	0	3	2	0	3	2	0	3	2	0
(H)	4	8	0	4	8	0	4	8	0	4	8	0	4	8	0	4	8	0	4	8	0
(I)	5	4	0	5	4	0	5	4	0	5	4	0	5	4	0	5	4	0	5	4	0
(J)	5	0	0	6	0	0	6	0	0	6	0	0	6	0	0	6	0	0	5	3	0
(K)	6	12	0	6	12	0	6	12	0	6	12	0	6	12	0	6	12	0	5	14	0
(L)	7	8	0	7	8	0	7	8	0	7	8	0	7	8	0	7	8	0	6	9	0

10. Bottomry Bond—*The same duty as on Bond.***Classes.**

(A)	Up to Rs.	10					
(B)	Over Rs.	10	and up to Rs.	50/-			
(C)	"	Rs. 50	"	"	Rs. 100		
(D)	"	Rs. 100	"	"	Rs. 200		
(E)	"	Rs. 200	"	"	Rs. 300		
(F)	"	Rs. 300	"	"	Rs. 400		
(G)	"	Rs. 400	"	"	Rs. 500		
(H)	"	Rs. 500	"	"	Rs. 600		
(I)	"	Rs. 600	"	"	Rs. 700		
(J)	"	Rs. 700	"	"	Rs. 800		
(K)	"	Rs. 800	"	"	Rs. 900		
(L)	"	Rs. 900	"	"	Rs. 1000		
(M)	and for every Rs. 500 part in excess of Rs. 1000.						

Recent Amendments by Local Act.

Class	Assam	Bengal	Bombay	C. P.	Mad.	Punj.	U. P.
		As in	No.	No.	As in	As in	No.
		Assam	Change.	Change.	Beng.	Beng.	Change.
(A)	3 as	"	"	"	"	"	"
(B)	6 as	"	"	"	"	"	"
(C)	12 as.	"	"	"	"	"	"
(D)	Rs. 1 8 as	"	"	"	"	"	"
(E)	Rs. 2 4 as.	"	"	"	"	"	"
(F)	Rs. 3/-	"	"	"	"	"	"
(G)	Rs. 3 12 as.	"	"	"	"	"	"
(H)	Rs. 4 8 as.	"	"	"	"	"	"
(I)	Rs. 5 4 as.	"	"	"	"	"	"
(J)	Rs. 6/-	"	"	"	"	"	"
(K)	Rs. 6 12 as	"	"	"	"	"	"
(L)	Rs. 7 8 as.	"	"	"	"	"	"
(M)	Rs. 3 12 as	"	"	"	"	"	"

Cancellation of Instrument—Rupees five.**Recent Changes by Local Acts.**

Assam.	Bengal.	Bombay.	C. P.	Madras.	Punjab.	U. P.
Rs 7-8as	Rs 7-8as	No change	No change	Rs 7-8as	Rs 7-8as	Rs 7-

Certificate of sale (1) where the purchase money does not exceed Rs 10/- — *Two annas*

Changes by Local Acts,

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
3 as	3 as	4 as	3 as	3 as	3 as	No change.

(2) where the purchase money exceeds Rs 10/- but does not exceed Rs 25/- duty 4 as.

Changes in cl (2) by Local Acts.

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
6 as	6 as	8 as	6 as	6 as	6 as	No change.

(3) In any other case—*The same duty as on a Conveyance in all the Provinces*

Conveyance

Class

Duty

(A) Where the amount or value of the consideration does not exceed Rs 50 } *Eight annas*

(B) Where it exceeds Rs 50 but does not exceed Rs 100 } *Rupee 1*

(C) Where it exceeds Rs 100 but does not exceed Rs 200 } *Rupees 2*

(D) Where it exceeds Rs 200 but does not exceed Rs 300 } *Rupees 3*

(E) Where it exceeds Rs 300 but does not exceed Rs 400 } *Rupees 4*

(F) Where it exceeds Rs 400 but does not exceed Rs 500 } *Rupees 5*

(G) So on up to Rs 1 000 and after that for every Rs 500 or part thereof in excess of Rs 1 000 } *Rupees 5*

Changes by Local Acts.

Class	Assam	Bengal	Bombay	C P	Madras	Punjab	U. P.
	Rs as	Rs as	Rs as	Rs as	Rs as	Rs as	Rs as
(A)	0 12	0 12	0 8	0 8	0 12	0 12	0 8
(B)	1 8	1 8	1 0	1 0	1 8	1 8	1 0
(C)	3 0	3 0	2 0	2 0	3 0	3 0	2 0
(D)	4 8	4 8	4 8	4 8	4 8	4 8	3 8
(E)	6 0	6 0	6 0	6 0	6 0	6 0	4 14
(F)	7 8	7 8	7 8	7 8	7 8	7 8	6 4
(G)	7 8	7 8	7 8	7 8	7 8	7 8	6 8

12. Copy—(i) if the original was not chargeable with duty or with duty not exceeding Re 1—*Eight Annas*. But duties in the following Provinces have been changed as follows —

Assam	Bengal.	Bombay	C P	Madras	Punjab.	U. P.
12 as	12 as	Re 1 8 as	12 as	12 as.	12 as	12 as

(ii) In any other case—*One rupee*

Recent Local Changes in cl (ii)

Assam	Bengal.	Bombay	C P	Madras	Punjab	U. P.
Re 1-8as	Re 1 8as	Rs 2/-	Re 1 8as	Re 1 8as	Re 1 8as	Re 1 8as

N. B. For exemptions see Stamp Act Sch I, No 24.

13. Counterpart or duplicate—of any instrument chargeable with duty, and in respect of which proper duty has been paid —

(a) If the duty with which the original instrument is chargeable does not exceed one rupee eight annas — *The same duty is payable as on the original.*

(b) In any other case—*One rupee.*

Recent Changes in cl. (b) by Local Acts.

Assam	Bengal.	Bombay	Madras	Punjab
Re 1 8as	Re 1 8as	Rs 2.0	Re 1.8as	Re 1.8as'

Exemption—Counterpart of any any lease granted to a cultivator when such lease is exempted from duty.

14. Debenture—(a) If by endowment or instrument of transfer—*Duty like Bond*

(b) If by delivery—*Duty as on Conveyance*

15 Deed of gift—*Duty like Conveyance.*

16 Divorce deed—One rupee *But the duty in the following Provinces has been charged as follows —*

Assam	Bengal	Bombay	C P	Madras	Punjab	U P
Rs 2½	Rs 2½	Rs 2½	No charge	Rs 2½	Rs 5½	Rs 5½

17 Deed of Exchange of property—*The same duty as on a conveyance for a consideration equal to the value of the property of the greatest value as set forth in such instrument*

18 Lease—including an under lease or sub lease and any agreement to let or sublet —

(a) Where, by such lease the rent is fixed and no premium is paid or delivered—

(i) Where the lease to be for a term of less than one year—*Duty same as on Bond for the whole amount payable or deliverable under such lease*

(ii) Where the lease purports to be for a time of not less than one year but not more than three years—*Duty same as on Bond for the amount or value of the average annual rent reserved*

(iii) Where the lease purports to be for a time in excess of three years—*Duty same as on Conveyance for a consideration equal to the amount or value of the average annual rent reserved*

(iv) Where the lease does not purport to be for any definite term—*Duty same as on a Conveyance for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long*

(v) (a) Where the lease purports to be in perpetuity—*Duty same as on a conveyance for a consideration equal to one fifth of the whole amount of rents which will be paid or delivered in respect of the first fifty years of the lease*

(b) Where the lease is granted for a fine or premium or for money advanced and where no rent is reserved—*the same duty as a conveyance for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.*

(c) Where the lease is granted for a fine or premium or for the money advanced in addition to rent reserved—*duty same as on a Conveyance for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease in addition to the duty which would have been payable for such lease if no fine or premium or advance had been paid or delivered* Provided that in any case when agreement to lease is stamped with the advalorem stamp required for a lease and a lease in pursuance of such agreement is subsequently executed—*the duty on such lease shall not exceed Eight annas.*

Exceptions.

(i) Lease executed in the case of a cultivator, and for the purpose of a cultivation including a lease of trees, for the pro-

duction of food and drink, without the payment or delivery of any fine or premium, where a definite term is expressed, and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees—

(ii) Lease of fisheries granted under the Burma Fishers (Act of VII of 1876) or the Upper Burma Land and Revenue Regulation II, 1889

Assam.

18 Lease, including an under lease or sub-lease and any agreement to let or sub-let—

(a) *Where by such lease the rent is fixed and no premium is paid or delivered.*

(i) where the lease purports to be for a term of not less than one year,	}	The same duty as on a Bottomry Bond for the whole amount payable or deliverable under such lease
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(ii) where the lease purports to be for a term of not less than one year but not more than five years,	}	The same duty as on a Bottomry Bond for the amount or value of the average annual rent reserved.
--	---	--

(iii) where the lease purports to be for a term in excess of 5 years but not exceeding 10 years.	}	The same duty as on a Conveyance for a consideration equal to the amount or value of the average annual rent reserved
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(iv) where the lease purports to be for a term exceeding 10 years, but not exceeding 20 years;	}	The same duty as on a Conveyance for a consideration equal to twice the amount or value of the average annual rental served.
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(v) when the lease purports to be for a term exceeding 20 years but not exceeding 30 years,

The same duty as on a Conveyance for a consideration equal to *three times* the amount or value of annual rent reserved

(vi) where the lease is for a term exceeding 30 years but not exceeding 100 years,

The same duty as on a Conveyance for a consideration equal to *four times* the amount or value of the average annual rent reserved

(vii) where the lease purports to be for a term exceeding 100 years or in perpetuity,

The same duty as on a Conveyance for a consideration equal, in the case of a lease granted solely for agricultural purposes, to *one tenth** and in any other case to *one sixth of the whole amount of rents* which would be paid or delivered in respect of the first fifty years of the lease

(viii) where the lease does not purport to be for any definite term,

The same duty as on a Conveyance for a consideration equal to *three times* the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long

(b) where the lease is granted for a fine or premium, or for money advanced and where no rent is reserved,

The same duty as on a Conveyance for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease

* In Madras one sixth

(x) where the lease is granted for a fine or premium, or for money advanced in addition to rent reserved

The same duty as a Conveyance for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advanced had been paid or delivered

Note—Provided that, in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed Eight annas.

Exemption.

Lease executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees

Amendment in Bengal.

Same as in Assam.

Bombay.

No Amendment [i e the original duties under the British India Stamp Act as set forth before at pages 632—634]

Central Provinces

No Amendment.

Amendment in Madras.

As in Assam (See foot-note at page 635)

Amendment in Punjab**Same as in Bengal****Amendment in the United Provinces.**

Leases have been classified in U. P. on the same lines as in Assam. Duty in both the provinces is the same for classes (iii) to (viii), as for classes (i) and (ii) there is slight difference. For duty for these two classes in U. P. read "Bond" in place of "Bottomry Bond" in the corresponding columns in the Assam Schedule.

19. Memorandum of Association of a Company—

(a) If accompanied by Articles of Association under Section 37 of the Indian Companies Act.—*Rupees fifteen*

Changes in cl. (a) by Local Acts.

Assam Bengal Bombay C. P. Madras Punjab U. P.
Rs 30/- Rs 30/- Rs 30/- Rs 30/- Rs 30/- Rs 30/- Rs 30/-
 (b) if not so accompanied—Rs 40/-

Changes in cl. (b) by Local Acts.

Assam Bengal Bombay C. P. Madras Punjab U. P.
Rs 80/- Rs 80/- Rs 80/- Rs 80/- Rs 80/- Rs 80/- Rs 80/-

Mortgage deed—(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given—*Duty same as on a Conveyance for a consideration equal to the amount secured by such bond*

(b) Where possession is not given or agreed to be given as aforesaid—*Duty same as on Bond ex in Madras where duty payable on a Bottomry Bond charged*

Explanations to cl. (b)

A mortgagor who gives to the mortgagee a Power of Attorney to collect rents or a lease of the mortgaged property or part thereof is deemed to give possession within the meaning of this articles.

c (i) When a collateral or auxiliary or additional or substituted security or by way of further assurance for the above mentioned purpose, where the principal or primary security is duly stamped *For any sum secured not exceeding Rs 1000/—Eight annas*

Changes in cl. c (i) by Local Acts.

Assam.	Bengal	Bombay	C P	Madras	Punjab	U P
12 as	12 as	Re 1/	No change	12 as	12 as	12 as

c (ii) and for every Rs. 1000/- or part thereof secured in excess of Rs 1000/—Eight annas.

Assam.	Bengal	Bombay	C P.	Madras	Punjab	U P.
12 as.	12 as.	Re 1/	No change.	12 as	12 as	12 as

Exemptions —(1) Instruments executed by persons taking advances under the Land Improvement Loan Act 1863 (Act XIX of 1883) or the Agriculturists' Loans Act 1884 (Act XII of 1884) or by other sureties as security for the repayment of such advances

(2) Letter of hypothecation accompanying a bill of exchange.

20. Partition—Instrument of. *The same duty*

This is the Law as on a Bond for the amount of the
in all the Provinces value of the separated share or shares
of the property.

N. B—The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares)

shall be deemed to be that from which the other shares are separated

Provided always that—

(a) When an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than twelve annas ,

(b) Where land is held on Revenue Settlement for a period not exceeding thirty years, and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue ,

(c) Where a final order for effecting a partition passed by any Revenue Authority or Civil Court or an award by an arbitrator directing a partition is stamped with the stamp required for an instrument of partition and an instrument of partition, in pursuance of such order or award, is subsequently executed the duty on such instrument shall not exceed eight annas [But 12as in Assam Bengal, Punjab, Madras and U P]

21 Partnership—(A) instrument of (a) when the capital of the Partnership does not exceed Rs 500—*Two rupees and 12 annas* But the duty has been changed in the Provinces as noted below —

<i>Ass</i>	<i>Benl</i>	<i>Bom</i>	<i>C P</i>	<i>Mad</i>	<i>Punj</i>	<i>U P</i>
Rs 5	Rs 5	Rs 5	Nochange	Rs 5	No change	Rs 3 12as

(b) In any other case—*Ten rupees* But the duty has been changed in the Provinces as noted below ;—

<i>Ass</i>	<i>Benl</i>	<i>Bom</i>	<i>C P</i>	<i>Mad</i>	<i>Punj</i>	<i>U P</i>
Rs 20	Rs 20	Rs 20	No change	Rs 20	No change	No change

(b) *Dissolution of*—Rs 5 (in some Provinces Rs 10)

22 Power of attorney—when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents —*Eight annas*

But the duty has been changed in the Provinces as noted below —

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
12 as	12 as	Re 1	12 as	12 as	Re 1	No change

(b) when required in suits or Proceedings under the Presidency Small Cause Courts Acts—*Eight annas*

Changes by Local Acts

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
Re 1/	Re 1/	Re 1/	8 as	Re 1/	Re 1/-	8 as

(c) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a)—*One rupee*

Changes by Local Acts

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
Re 1 8	Re 1 8	Rs 2/	Re 1 8	Re 1 8	Rs 2 8	No change

(d) when authorising not more than five persons to act jointly and severally in more than one transaction or generally—*Five rupees*

Changes by Local Acts.

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
Rs 7/8as	Rs 7/8as	Rs 10/	Rs 7/8as	Rs 7/8as	Rs 10/	No change

(e) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally—*Ten rupees*

Changes by Local Acts.

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
Rs 15/	Rs 15/-	Rs 20/	Rs 15/	Rs 15/	Rs 20/	No change

(f) when given for consideration, and authorising the attorney to sell any immovable property—*The same duty as on a Conveyance for the amount of consideration* **This is the law in all the Provinces**

(g) in any other case—*One Rupee for each person authorised*

Changes by Local Acts

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
Re 1 8as	Re 1 8as	Rs 2/	Re 1 8as	Re 1 8as	Rs 2/	No change

for each person authorised

23 Promissory note :—when payable on demand -

- | | |
|-------------------------------|-------------------|
| (1) Up to Rs 250 | <i>One anna</i> |
| (2) Over Rs 250 up to Rs 1000 | <i>Two annas</i> |
| (3) In any other case | <i>Four annas</i> |

N B—When payable otherwise than on demand—duty as on Bill of Exchange (for which See Stamp Act Sch I, No 13.)

24 Reconveyance of Mortgaged Property —	} duty like Conveyance in all the Provinces
(a) for consideration up to Rs 1000	
(b) in any other case— <i>Ten rupees</i>	

Changes in (b).

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
Rs 15/	Rs 15/	No change	Rs 15/-	Rs 15/	Rs 15/	Rs 15/-

Release (a) if the amount or value of the claim does not exceed Rs 100—*The same duty as a Bond for such amount or value as set forth in the release.*

Changes effected in different Provinces are as given below —

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
No Change	No Change	No Change	No Change	As on Bottomry Bond	Same as in Madras	No Change

(b) any other case—*Five Rupees* The changes in different provinces are shewn below —

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
Rs As	Rs As	Rs As	Rs As	Rs As	Rs As	Rs As
7 8	7 8	10 0	7 8	7 8	7 8	7 8

25 Security-Bond or Mortgage deed executed by way of security (a) if the amount secured does not exceed Rs 1000—*The same duty as for Bond for the amount secured in all Provinces except in Madras where the duty is as that of a Bottomry bond*

(b) in any other case—*Rupces Five only*

Changes in cl. (b) by Local Acts

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
Rs As	Rs As	Rs As	Rs As	Rs As	Rs As	Rs As.
7 8	7 8	10 0	7 8	7 8	7 8	7 8

N. B For exemptions—see under Art 57 of the Stamp Act Sch I

26 Surrender of Lease—(a) When the duty with which the lease is chargeable—does not exceed Rs 5—*The duty with which such lease is chargeable*

(b) in any other case—*Five rupees*

Changes in cl (b) by Local Acts.

<i>Assam</i>	<i>Bengal</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U. P</i>
Rs As	Rs As	No	No	Rs As	Rs As.	Rs. As
7 8	7 8	Change	Change	7 8	7 8	7 8

Exemption—Surrender of lease, where such lease is exempted from duty.

27 Trust (A) Declaration of—not by a Will—*The same duty as for a Bond* for the sum equal to the amount or value of the property but not exceeding Rs 15 In Assam Bengal Madras and the Punjab the duty is as on a *Bottomry Bond* not exceeding Rs 22 8as In U P the duty is chargeable as on a Bond but not exceeding Rs 22 8 as

(B) *Relocation of*—not by a will—Duty like bond on property concerned—but not exceeding Rs 10 In Assam Bengal Madras and the Punjab—duty is chargeable as on a **Bottomry Bond** but not exceeding Rs 15 In U P however the maximum duty is maintained but the duty charged is as on a **Bond** till the maximum is reached

28 Vakil or Advocate—entry as—Rs 500

Changes by Local Acts

Assam	Bengal	Bombay	C P	Madras	Punjab	U P
Rs	Rs	No	No	Rs	Rs	No
750	750	Change	Change	625	750	Change

CHAPTER III.

Registration

Documents

There are 3 classes of documents

(1) Documents which must be registered (details given in section 17A of the Registration Act)

(2) Documents of which registration is optional (Documents described in section 18 A of the Registration Act)

(3) Documents exempted from Registration (Documents mentioned in section 90A of the Registration Act)

The sections are not reproduced but should be referred to whenever necessary

Note —In law Courts registered documents must be proved like other ordinary documents Registration is not evidence of execution See I L R 17 Cal 903

Time of Registration.

A document should be registered within 4 months from the date of its execution The document, however, may be registered after that time on payment of a fine not exceeding 10 times the registration fee (See sections 23 and 24 of the Indian Registration Act)

N B —A Will, however, may be registered at any time

Place of Registration

Documents relating to property are registered in the office of the Sub Registrar within whose jurisdiction the whole or part of the property is situate (sec 28), other documents may be registered at any Sub Registration office The Registrar may register any document which might be registered at any office subordinate to him The District Registrar or the Registrar of a Presidency town may register any document on payment of the prescribed fee

Registration at private residence

Documents are ordinarily registered at the Registration Office, but in special cases, on payment of

fees and travelling expenses of the registering officer, they may be registered at private residences.

Effect of Registration.

A registered document operates from the day of its execution. It is entitled to priority over a previous unregistered document, provided the person in whose favour the latter document is executed had no previous notice of the former.

Note—A document registered by an officer having no jurisdiction to register it is not effective. *Vide Jogen v Bhootnath*, L L R 29 Cal 654=6 C W N 856

Effect of Non-registration.*

If a document required by law to be registered is not registered, it is inadmissible in evidence as evidence of the transaction but may be used in evidence for collateral purposes. See the case of *Mugnum v Gunmukh Roy*, I L R 26 Cal. 334

Invalid Registration

If any fictitious property be included in a deed for conferring jurisdiction for registration, the deed becomes invalid, 41 Cal 972 P C. But if the property be in existence, and the executant bonafide believed that he had title to the property, though in fact he might have none, the deed, on that ground alone, does not become invalid, 41 All 22. But where the executant knew that he had no title to such land, the deed becomes inoperative. 43 Mad 436. Read also 4 Pat. L J 432

* It was held by their Lordships of the Privy Council in a recent case reported in 31 C W N 125 that an agreement to sell an immovable property was inoperative unless registered. This is no longer the law after the passing of Act II of 1927.

Table of fees under the Indian Registration Act (Act III of 1877.)

[The fees vary in different Provinces]

Ordinary fees as charged in Bengal. *

I	Fee		
	Rs	As	P
(1) When the value does not exceed Rs 50	0	8	0
(2) When the value exceeds Rs 50 but does not exceed Rs 100	0	12	0
(3) When the value exceeds Rs 100 but does not exceed Rs 250	1	0	0
(4) When the value exceeds Rs 250 but does not exceed Rs 500	3	0	0
(5) When the value exceeds Rs 500 but does not exceed Rs 1,000	4	0	0
(6) When the value exceeds Rs 1,000, for every Rs 1000 or part thereof in excess of Rs 1,000	2	0	0
(7) For the Registration of General power of attorney	4	0	0

(b) The consideration expressed in a document shall generally be taken to be its value for determining the Registration fee. Where no consideration is expressed, the value of the property dealt with as shown in the document shall be taken.

This rule applies in respect of (1) Conveyances (2) Bills of sale, (3) Deeds of gift or dower, (4) Deeds

* In some Provinces charges are made as in Bengal but in others charges are slightly different

of settlement, (5) Deeds of partition (6) Leases, (7) Deeds of mortgages or documents creating charges, (8) Bonds, (9) Assignments of any interest secured by a bond or mortgage deed, (10) Policies of insurance, (11) Bills of exchange and promissory notes

Value of document how calculated.

The value of the right, title or interest affected by the document shall be (a) the consideration expressed in document, and (b) for bonds and mortgages, the amount to be secured.

If no consideration is stated in the document a fee of Rs 20 is charged

Lease.

- | | |
|--|--|
| (1) For one year only, | } Fee is payable on one year's rental |
| (2) For over 1 year and for less than 10 years, | |
| (3) For over ten years or in perpetuity or for an indefinite period, | } Fee is payable on average rental payable during the period |
| (4) If premium is paid for the lease and no rent is fixed, | |
| (5) If premium is paid and rental is also fixed, | } Fee is payable on twice the sum payable as average rental. |
| | |
| | } Fee is payable on premium paid. |
| | |
| | } Fee is payable on premium paid and also on the average annual rental payable |
| | |

In cases of Leases (Pottas) and counterpart of Leases (Kabuliats) the total fee charged shall not exceed the fee chargeable on the lease.

Receipt.

For separate registration of the receipt of any payment in respect of any deed of sale, mortgag

or lease the fee is charged on the amount stated in such receipt but if the original document had been registered—the fee shall not exceed Rs 2

Partition deed

Fee is payable on the sum for which stamp is paid

Depositing and receiving documents

	Fee		
	Rs	As	P
IV (a) For depositing a will under sealed cover	4	0	0
(b) For opening the said sealed cover	4	0	0
(c) Registration of a Will or an authority to adopt (open) or Revocation of Will	8	0	0
(d) Withdrawing a sealed cover containing a Will	4	0	0

N B—The fee for copy is charged in addition

Decree

V Registering certified copy of a decree	1	0	0
Registering agreement for personal service	0	8	0

Documents relating to properties situate in different jurisdictions

Where a copy of a document has to be sent to another office : *i.e.* where the documents relate to properties situate within jurisdiction of several offices *extra fee* is charged Copying fee does not exceed Rs 10 and where memorandum of a document is sent the charge does not exceed Rs 10

Searching fees.

For searching the index of a register for the 1st year, Re. 1 and for every other year 8 annas. Searching Register-books I, II, III, IV parts, Re. 1 per book. The maximum fee for inspection of any number of registers in respect of any one entry or document is Rs. 10, and that for inspection of any number of registers in respect of any number of entries or documents is Rs 20

Copying Charges.

For copies in native character, 2 annas, and for copies in English character 4 annas, for every 100 words

Expedition Fees.

If copy is required on the day of application expedition fee of Rs 2 for 2 pages of 300 words, and if more than 2 pages, 8 annas for every extra page, has to be paid

Fees for registration before the Registrar.

For registration of any document before a Registrar under section 30 (1) of the Reg. Act, *extra fee* equal to the Registration fee is charged, but such *extra fee* does not exceed Rs 10

Registration in Calcutta.

Where no portion of the property is situated in Calcutta, an *extra fee* of Rs 20 is charged over the ordinary fees.

Cost of registration at a private residence

Charges—*extra fee* of Rs. 20 is charged travelling allowance of the registering officer.

N B—If more than one person reside in the same place and register one document, one set of costs is only charged

Penalty for late registration.

For registration under sections 24 or 34—if presented after 7 days—twice the ordinary fee, if after one month—4 times the ordinary fee if after 4 months—10 times the ordinary fee (See section 23 and 24 of the Reg Act)

N B—These include the ordinary fees

Power of attorney.

Special power of attorney (authentication or attestation) Rs 2

General power of attorney (as above)—Rs 4

Extra copying fee.

For documents of more than 2 pages of 300 words, extra charge is made for every additional page

Penalty for unclaimed document.

For unclaimed documents after 1 month from the date of registration—8 annas per month or part thereof If a document remains unclaimed for more than one month after refusal of registration, fees as in case of unclaimed documents are charged but not exceeding Rs 10

Costs of processes.

Under section 37 of the Registration Act summons may be issued by the Registering officer—charge is same as for taking summons in Revenue Courts

PART VIII.

**THE
CIVIL COURT PRACTICE & PROCEDURE.**

GLOSSARY

OF

COURT TERMS

NOTICING

JUDICIAL INTERPRETATIONS

OF

Important Words

AND

References

IN

Judgments of High Courts.

GLOSSARY.

Glossary of about 1000 words used in pleadings and documents with their appropriate meanings.

A.

ABAD (আবাদ)—Cultivation; land brought under cultivation.

ABADDHIYA (আবদ্ধীয়া)—Mortgaged.

ABIBHABAK (অভিভাবক)—Guardian.

ABKARI (আবকাৰী)—Excise or pertaining to the Excise department.

Abwab (আবওয়াব)—Illegal cesses imposed by landlords on their tenants (see sec. 74, B T. Act.) These are **Dastur, Hajatana, Batta, Pausua Abwabs**—11 Cal. 175; 17 Cal. 726.

ACHHI (অছি)—A manager appointed for protection of property, guardian of a minor; executor appointed under a Will

ACHAL-NAMA (অচলনামা)—Reference to arbitration.

ACHHILA (অছিলা)—A lame excuse

ADAL (আদাল)—Disobedience of order issued by a public servant towards Sadar Amlas.

ADAYA (আদায)—Collection.

Adhin (অধীন)—Under, appertaining to. 19 C. W. N. 1211

AHOWAL (আওহাল)—Condition; state of things.

AIAM (আয়েম)—Time.

AIMA (আয়মা)—See '*Ayama*'

AINDA (আইন্দা)—Following; next.

AJUHAT (অজুহাত)—Grounds of appeal or review.

AKHAR (আখর)—Quarrel, ill-feeling.

- AKHER (অখের)—Future
- AKHERI—End of anything—generally used to indicate the time of the year when accounts are closed in the Zaminder's office
- AKSAR—Frequently, often
- AKU—Occurrence of an offence like theft, rioting, etc
- AKUYAT—Wrongs deeds
- ALAG—Separate
- ALAHIDA—Separate
- ALAL—Uncertain
- ALI—A guardian of a minor or lunatic
- ALTAMGHA—Royal grants of rent free lands
- ALTAMMA—A perpetual grant of land
- AM—General, Common, ordinary
- AMAL—During the time of, admission, possession
- AMAL-NAMA—Written authority generally granted by landlords to tenants before execution of a regular lease. 1 B L R. A C 7
- AMANAT—Deposit
- AMDANI—Income, import
- AMIN—A Surveyor.
- AMALI—Agricultural year (see B T Act, sec 83, No 11)
- AM MUKTEAR—Person holding a power of attorney from another person.
- ANDAR—Inside, within, towards covered by, zenana *e g sudder-andar*)
- ANJAM—Settlement
- APOSH—Amicable settlement.
- ARAT—Big shop place of wholesale business.—
Ref. in 20 W. R 146.

ARJI—Plaint or petition

ARPAN-NAMA—Deed of gift

ASAL—Principal amount covered by a bond as distinguished from interest, original as distinguished from copy.

ASAL JAMA—The principal rent or revenue payable, as distinguished from cesses or taxes

ASBAB—Furniture

ASHAMI—An accused, a tenant, a debtor, a defendant

ASIAT NAMA—Last will executed by a testator

ASINA (অসনাই)—Illicit love

ASRAM—An asylum

ASSANNA BANDHU (অসন্ন বন্ধু)—Next friend of a minor

AWAJ (ALSO *Ewaz*)—Exchange

AWAL—Land which is capable of yielding excellent crops

AWALAT—Appurtenances, *e g*, building, trees etc, standing on the land, children

AWHAL—Condition, state of things

AYAMA—Hereditary and transferable grants of land by Mogul Emperors to pious Muhammadans for religious purpose

AYL (আইল)—Embankment

B.

BABUD—On account of.

BADI—Plaintiff

BAFIAT—Safe

BAGAT—Garden, land used for gardening.

BAGICHA—A small garden.

BENAMI—In the name of another Ref. 23 C.
W N 321

BENAMIDAR—A person in whose name property is held by another.

BESIJIL—Out of order

BEWA—Helpless widow

BE-WARIS—Intestate person , unclaimed property

BHABI (ভাবী)—Future

BHADRASAN—Homestead

BHAGARH (ভাগাড)—Place for depositing the dead bodies of animals

BHAI ACHARA (ভাই-আচার)—Tenure held in common or partly in common or partly in severalty

BHAOLI—Land for which a tenant pays rent in kind

BHARATI—Land formed in river-bed by sand deposits (*e g* , Beel-bharati jami)

BHARATIA (ভাড়াটিয়া)—Temporary tenant, *e. g.* of a house or homestead

BHATA—Allowance

BIGHA—Land measure 14,400 sq feet in area

BILAT-BAKI (বিলাত বাবী)—Unrealised sums on *khata* accounts in shops

BILI KARA—To let

BIL KUL—Wholesale

BIMAR-JIM—As per details , through

BIRTA—Grant

BIRODHYA—Disputed

BISAN BIRTA—Rent-free land granted by Hindu zeminder to pious Baishnabs

BISHNA PRIT—Grant of rent-free land for purpose of worship of Siva and Bishnu

- BITANG (বিভং)—Detailed account
 BITARIKH (বিভা[বিধ]—Date by date
 BOIBALOAFA—Mortgage by conditional sale
 BOI HEBA—Sale of property obtained by gift
 BOI NAMA (বধননামা)—Sale certificate
 BOISIDHA—Foreclosure by enforcing a mortgage
 BONKAR—Right of a tenant of cutting wood in
 jungle or waste land , produce of forest
 BORWAD—To do mischief , to be ruined
 BORKANDAJ—A zemindar s peon

C

- CHHA-AIL (ছাইল)—Petitioner , complainant
 CHACK BANDI—Divided into several plots
 CHACK MILLAN—Enclosed by buildings of equal
 height on all sides
 CHHAAM (ছাইয়াম)—Partition of landed property.
 CHAHRAM POTTONI—An under pottani lease
 CHAI LABI (ছাইলবী)—Inundation
 CHAKRA BRIDDHI (চক্রবৃদ্ধি)—Compound interest
 CHAKRAN—Service tenure , land held by private
 servants or public officers in lieu of wages
 e q, chaukidari chakran lands
 CHALAN—Invoice , remittance , sending up an
 accused for taking trial , deposit form used in
 Court or Collectorate
 CHANI (ছানি)—A second trial retrial , review or
 revival
 CHARA (চড়া)—Sand bank.
 CHAR—Land formed in the river bed , sand deposit .
 pasture land See Chur, 33 Cal 444

- CHHAR CHITI (ছাঁউচিঠি)—Pass, permit
- CHAR POTTRA (ছাঁউপত্র)—A deed of relinquishment
- CHASA—Cultivator
- CHATAK—Land measure 45 square feet in area
- CHAUDHURI—Headman in a village
- CHAUHADDI (চৌহদ্দি)—Boundaries
- CHAUKI—A Civil Court station where there is no
Sub-Divisional Magistrate
- CHAUKIDAR—\ village watchman
- CHAUKIDARI—Belonging to a chaukidar or village
watchman Chaukidari tax—See 22 Cal 680.
- CHAUTH—A fourth part of standard assessment
- CHAWK (চক)—Part of a zemindari, parcels of land
included in one account
- CHUR—A sandy bank usually formed in the bed
of a river Ref in 33 Cal 444 (see Wilson's
Glossary)
- CHUTKI—Remuneration paid up to a weigh man
Small
- CHECK-MURI (চেকমুরি)—Counter foil book of rent
receipts
- CHEPATTANI (ছেপতানী)—A lease under a pattanidar
- CHHITA (ছিটা)—A small portion
- CHITTA (চিটা)—Measurement paper giving details of
survey of lands
- CHOLA—See "SOLA"
- CHOSTA—Tight, level
- CHOTHA (চোথ)—Rough, e g চোথহিসাব
- COT—See "Kot"
- COT KOBALA—See "Kot Kobala"
- CORAK—See "KROAK"

D

DABI—Claim

DAEM (দায়েম) — Second quality

DAFA—Item

DAFA DAR—One who looks after a work ; the immediate head of Chowkidars of a Union

DAFTAR—Record , Office.

DAFTAR-I—A book-binder.

DAFTAR KHANA—Record room.

DAFA-WARI—*Seriatim* , one after another

DAG—Plots marked at the time of surveying lands

DAID—Heirs

DAKHAL—Possession

DAKHALKAR (দখলকার) —A person in possession

DAKHALI SATTA (দখলী স্বত্ত্ব) —Occupancy right.

DAKHIL—To file.

DAKHILA —Rent receipt

DAKHIL KHARIJ—To get name of a new tenant substituted in the place of the old in a Zeminder's office , mutation

DALADALI—Party feeling

DALAL—Broker , a tout

DALIL—Document.

DALILDATA (দলিলদাতা) —One who executes a document

DANGA (ডাঙ্গা) —High and dry land.

DANPATTRA—Deed of gift

DANRAH (দাঁড়া) —Practice ; usage [*cont.* Bedara (বেদাড়া) or irregular.]

DAOWA (দাওয়া) —Claim.

DAR—Under ; value.

DAR IJAR DAR (দরইজার দার)—A lessee under an *ijaradar*

DARI—Relating to present

DARKHASTA—Application

DAR MAH—Monthly remuneration

DAR MOKARARI—Under Mokarari lease 14 Cal 108

DAROBASAT (দরোবস্ত)—From beginning to end including everything *e g Darobast Hakook*

DAROBAST HAKOOK (দরোবস্ত হকুক)—Every right appertaining to a property—frequently used in conveyances

DARPATTNI—An under tenure under a *pattanidar*—
Vide 9 C W N 96, 32 Cal 169

DARPATTANIDAR—One who holds *darpattani*—Read 7 C L J 23 (n)

DASTABEJ (দস্তাবেজ)—Document

DASTAK—Warrant of arrest

DASTAKHAT—Signature

DAST BAR DARI—Abandonment

DASTURI (দস্তুরী)—Customary reward it is a kind of *abwab* 11 Cal 175

DAUL—Lease rule

DASTUPAT—Small Pittance 18 W R 343

DASTURI—Remuneration commission

DAUL—Lease rule

DAYA (দায়)—Incumbrance

DAYER (দায়ের)—To file not yet disposed of pending

DEARAH—An island formed in the bed of a river by alluvial deposits (See B T Act)

DEBATTAR (দেবত্তা)—Property dedicated for due performance of worship of Hindu idols

DENDAR—Judgment debtor a debtor

DEW MOHAR (দেন মোহর)—Dower money payable to a Muhammadan bride Recovery (দেন মোহর) —
35 Bom 386

DESHACHAR—Custom usage

DEWANI ADALAT—Civil Court

DEWLIA—(দেওলিয়া)—Insolvent

DHARAT (ধরতি)—Extra allowance

DIARA—An island formed in the bed of (Wilson's Glossary) Ref in 33 Cal 444

DIDARI—Land set apart for maintenance of a proprietor at the time property is transferred

DIHI—A group of small villages

DIHI DAR—One who holds a large number of *dihis*

DOBARA (দোবারা)—Over again *Res judicata*

DO JAMI (দো জমী)—Land which yields two kinds of crops every year

DOKAR—Repetition twice over

DO SIMANA—Boundary line between two plots of lands

DO TARFA—Contested between two parties

DUEM JAMI (দুয়েম জমী)—Second quality of land capable of yielding three fourths of the produce

E

EBBRA—Relinquishing right, declaring hostile of a witness

EB NEA (এবনে)—Son of

EJAHAR—Evidence

EJARA—See "Ijara"

EJARADAR—See "Ijaradar"

EJLASH—Court, office

EJMALI—See "Ijmalī"

EKANDAJ—A form of chitta used in Zemindari sherista

EKANDAJ JARIP—A detailed survey of holdings under Zemindari

EKJAI—Bringing together

EKJAI CHALAN—Account of remittances made by mufassil officers to Zeminder's Sadar Kutchery.

EK-KATTA—Conjointly

EKRAR—Confession, agreement, admission

EKRAR NAMA—Agreement, a deed of admission—
Vide 17 Cal 291

EKSA—In one way

EKTARFA—*Ex parte*.

EKUN (एकुन)—TOTAL

ELAKA—Jurisdiction

ELAKADHIN—Under the jurisdiction

EMARAT (ईमारत)—Brick-built house

ENAM—See "Inam."

ENAMDAR—See "Inamdār"

ENTAZARI—Expectation, to depend upon

ENTF-KAL—(एन्टफ़कल)—Attachment; transfer, death

ENTZAM—Settlement, arrangement

ERI—Embankment

ESTAFA—Surrender

ESTAHAR—A notice, a proclamation

ESTAD or ESTAK—From the time

ESTAWA—(एस्तावा)—Agreement for gradual increase of
rent for land recently brought under cultivation

ETE LA—Information

ESTIM RARI—See *Istim rari*

ESTIM RAR DAR—See "*Istim rar dar*"

EWAOJ—In lieu of in substitution for, exchange

EZAN NAMA—A Will

F

FAISALA—A decree passed by Civil Court a final adjudication a judgment.

FAJIL—Deficit

FARDDA—List a piece of paper

FARIADI—Plaintiff or complainant

FARKHAT—Deed of relinquishment

FAR MAN—An order Royal order

FASLI—Produce of a year a Behari year commencing from July

FATTOWA—Opinion of a Muhammadan judge, *lazi*, or headman For *kazi*—See Ref in 3 C W N 118 etc under *kazi*

FARAI—Determination of right of inheritance of Muhammadan

FERAR—One who has absconded

FEREB—Forged, fraudulent, fraud

FER FAR—Alteration Wilful mis statement of things, *e q* of boundaries

FIRISTI—List table of contents of documents filed in Court

FOUTA (फौत)—Death, demise

G

GADA (गादा)—Stack, rick *e q*, rick of hay or straw

GAFILI—Negligence

GAIBI—Anonymous

GALAD—Defect

GALA GRAHA—A hanger on , a burden

GAR (গর)—Not, *e g* , 'gar kaimi "

GAR HAJIR—Absent

GARH (গড়)—A ditch, trench

G HAR-JAMAI—A son-in law who lives in his father in-law's house

G HAT—A ford , a landing place in tank or river
Ref in 20 W. R 146

G HAT-WALLI—(See B T Act") holdings held in perpetuity at fixed rental for special services rendered by the grantee

G HAT-TI (ঘাটতি)—Deficit

G RAUNT (গোঁড়)—Trick

G HER—Circumference ,

G HONJ (ঘোঁজ)—Curve

G O CHARAN—Pasture land

G OLA—Granary

G O LAM—Servant

G OLE-DAR—Wholesale merchant

G OMASTA—One who collects rent of a landlord —For
Power of gomasta—Read 1 W R 56, 3 Cal 557

G O R (গোর)—A grave

G O RASTHAN—A burial ground

G OTRA (গোত্র)—Family classification amongst high caste Hindus

G OTRAJA—Belonging to the same gotra

G OY ENDA—A spy.

G RAM—A village

G RFP TAR—To arrest , arrest

GRI HASTHA—Family a cultivator , one of the *asrams* according to Hindu law

GUZASTA—Lump rental *e, g* জমাগুজস্তা ।

H

HAJA—Failure of crops due to inundation, *e g* হাজাফা ।

HAZAT—In abeyance হাজতফা ।

HAZAT-ANA—A kind of illegal abwab formerly realised by landlord **Vide -11 Cal 175**

HAK Real

HAK DAR—The real owner (a person) entitled to any legal right

HAKIM—Judge

HAKIAT—Title suit title

HAK SAFA—Right of pre emption

HAL (হাল)—Current present

HALAF—Oath

HAL BAKI—Arrears of recent year

HALOT—A village pathway

HAL SANA—A Zeminder s peon who calls tenants

HANA—Breach in an embankment caused by heavy flow of water

HAOLAT (হোলত)—An unwritten loan

HARA HARI—(হাবাহাবি)—Proportionate

HASIL—To carry out , to reclaim to bring under cultivation

HASIL JAMI—Reclaimed land , land brought under cultivation

HASTA-BUDH (হস্তবুদ্ধ)—Rent roll , account giving area and rent of land held by a tenant

- HAT—Market place, where *bazar* is held on fixed dates,
Ref. in 11 W.R. 400; 21 W.R. 853; 35 Cal 82.
- HATCHITA—An account in which transactions between parties (*e g.* goods or money delivered or paid by any party) are entered.
- HAWALA—Permanent right in land
- HEBA—Gift under the Mahommedan law Ref. in
13 Bom. 264
- HEBA-NAMA—Deed of gift
- HERFER—*See* *ferfar*
- HIBA—Same as *Heba*
- HEBA-BILEWAZ—Assignment of property by a Mahommedan to his wife in lieu of dower; 23 Mad
70 Ref 10 C W. N. 706; 25 C. L. J. 286
- HINDUS—Who are—44 I C 405; 37 I C 780
- HISAB—Accounts
- HIS SA—Share
- HOOR MOOT (হুৰ্মুত)—Dignity, respectability.
- HOW-LAS—Permanent hereditary tenures in Bakerganj 1 W R. 5 and 126.
- HUKUM—Orders

I

- IAD DAST—A memorandum; a note
- IDDAT—The period during which a Mahommedan divorced wife cannot re-marry Ref. in 30 Bom
537.
- IB-BRA (ইব্রা)—*See* "Eb-bra."
- IJARA—Lease of an estate, tenure or holding on definite terms as to payment of rent, etc.
- IJARA-DAR—A tenant who holds land under *Ijara* system

(see above)

ISMALI—Joint tenancy held in common

INAM—Reward

INAMDAR—Holder of 'Inam

INSUFF—Dispensing justice—hence *Munsif* means one who dispenses justice

IRSAL (ইরশাল) —Remittance of money from one place to another

°ISOM (ইসাম্)—Name

ISOM NOBISI—Last of names, list of witnesses to be cited by a party

ISTAHAR—A notice or a proclamation

ISTAR—From the time

ISTIM RARI (ইস্তিম্বারী)—Tenures granted in perpetuity —12 M I A 263

ISTIM RAR DAR—A person holding *istimrari* tenures

ISTOFA—Relinquishment of right *e g* of a tenant
“বোহ-ইস্তোফা।”

ITTLA (ইত্তেলা) —Report information

IZA—Bringing forward in account

IZAM-NAMA (ইজামনামা)—A Will

J

JABAN BANDI—evidence depositor

JABANI—oral

JABAR DOSTH—High-handed, oppressive

JABDA—Confiscated punished total, *e g* জব্দজমা,
fixed gross rental

JABEDA (জাবেদা)—Usage, rough, day-book, *e g*,
জাবেদা খাতা।

JABEDA BAHİ—Daily account book

JABEDA JAMI—An enclosed piece of land.

- JABEDA NAKAL—Certified Copy
- JABETA (জাবেতা)—Usage, rule
- JEAB—Fixed
- JAEEJ—Legal
- JAHIR—To proclaim
- JAI—Detailed account
- JAI BAN DHAK (জীবনধাক)—Simple mortgage
- JAI DAD—Property.
- JAIGIR—Grants of rent free lands by Mogal Emperors
for meritorious services
- JAL (জাল)—Forgery, forged
- JAL KAR—Income from water, fishing right—1 C
W N lxxxvi
- JAL SAJI—Counterfeit
- JAMA—Deposit, rental or revenue fixed for a holding
or an estate, income, holding—25 Cal 917.
- JAMA BANDI—Assessment of rent
- JAMANAT—Security
- JAMA TUMARI (জমা তুমারী)—Ascertainment of rent in
the presence of a tenant.
- JAMIDARI—Estate
- JAMIN—Surety
- JAMIN NAMA (জামিননামা)—Deed executed by surety
- JANANA—Lady woman, inner portion of a house
- JANAB (জনাব)—Respected Sir
- JANKAR (জাঁকড়)—Delivery on condition of return-
ing the thing in case of disapproval
- JANKAR BAHİ—Suspense account book
- JAOJA (জাওজা)—Wife
- JOAJE (জোজে)—Husband

JAOWAB—Reply

JAOWAB DIHI—Explain

JARESH MAN (জরেশমন্)—Amount payable as consideration

JARI (জারি)—To execute

JARIP—Survey

JARIPESHGI (জারিপেশ্গী)—Payment in advance, a kind of lease

JAROO—Wife

JARURI—Urgent

JATI (জাতি)—Religious ascetic, Ref 18 C W N 59
Disciples of *jatis* are called **Chelas** Ref 18 C. W N 59

JAYA (জায়)—Details

JERAH—Cross examination

JERBAR—To ruin

JHUNKI—Responsibility

JIMMA (জিম্মা)—Custody

JOBDA (জব্দ)—Punish, confiscate

JOBDA JAMA (জব্দজমা)—fixed jama as recorded in Zemindari cutchery

JOG SAJASI (জোগসাজসী)—Collusive and fraudulent.

JUNGLE BOORI—A kind of lease granted on favourable terms in consideration of tenants clearing the jungle on the land

JOTE—Tenure—21 C W N 188, 505; 8 C. W. N 117

JOTEDAR (জোতদার)—One who holds a jama, a cultivator

JOTH—Holding

- JABEDA NAKAL—Certified Copy. | |
- JABETA (জাবেতা)—Usage ; rule.
- JEAB—Fixed.
- JAEEJ—Legal.
- JAHIR—To proclaim
- JAI—Detailed account.
- JAI-BAN-DHAK (জাইবন্ধক)—Simple mortgage.
- JAI-DAD—Property.
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for meritorious services
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the presence of a tenant.
- JAMIDARI—Estate
- JAMIN—Surety
- JAMIN-NAMA (জামিননামা)—Deed executed by surety.
- JANAMA—Lady , woman ; inner portion of a house.
- JANAB (জনাব)—Respected Sir
- JANKAR (জাংকড়)—Delivery on condition of return-
ing the thing in case of disapproval.
- JANKAR-BAHI—Suspense account book.
- JAOJA (জাওজা)—Wife.
- JOAJE (জোজে)—Husband.

JAOWAB—Reply

JAOWAB DIHI—Explain

JARESH MAN (জবেশমন)—Amount payable as consideration

JARI (জারি)—To execute

JARIP—Survey

JARIPESHGI (জারিপেশগী)—Payment in advance a kind of lease

JAROO—Wife

JARURI—Urgent

JATI (যতি)—Religious ascetic, Ref 18 C W N 59
Disciples of *jatis* are called **Chelas** Ref 18 C W N 59

JAYA (জায়)—Details

JERAH—Cross examination

JERBAR—To ruin

JHUNKI—Responsibility

JIMMA (জিম্মা)—Custody

JOBDA (জব্দ)—Punish confiscate

JOBDA JAMA (জব্দজমা)—fixed jama as recorded in Zemindari cutchery

JOG SAJASI (যোগসাজসী)—Collusive and fraudulent

JUNGLE BOORI—A kind of lease granted on favourable terms in consideration of tenants clearing the jungle on the land

JOTE—Tenure—21 C W N 188, 505, 8 C W N 117

JOTEDAR (যোতদার)—One who holds a jama a cultivator

JOTH—Holding

JOTH BANDHAKI (জোতবন্ধকী)—Usufructuary mortgage

JOTTRAHIN (যোত্রাহীন)—Insolvent

JOUTH (যৌথ)—See "*Ejmat*"

JOUTH-KARBAR—Joint business

JOUTUK—Dowery, present gift

K

KABACH—Rent receipt, Dakhila

KABIN NAMA কাবিন নামা—A deed by which a property is conveyed to a lady (generally executed by a Mahomedan in favour of his wife for payment of dower money)

KABUL (কবুল)—To admit to confess

KABULIAT—Lease executed by a tenant Ref in 15
W R 170

KAEM—To fix, fixed

KAIMI—Means permanence regarding occupation but there may not be fixity of rent—19 C W N 1129, 14 C W N 916.

KAEMI PATTA—Permanent lease

KAFM MOKAM (কাফেন মোকাম)—Representative in interest

KAIDA—Control.

KAIFIOT—An explanation, striking out balance

KAYESTHAS—Are—Sudras 20 C W N 901, 25
C W N 69

KAJI—A judge See *Kazis Act XII of 1880* Ref 3
C W N 158, 20 C W N 113

KAMAR—A kind of land actually held by the raiyat

KAMBAKHAT—Unfortunate

KANUN (কানুন)—Law regulations in force

KANUNGO—A village surveyor who keeps accounts of land

KARAR—Condition, adjourned date of payment

KARJA—Debt, loan

KARJANCHAGA (করজাঞ্চা)—Form of address used in Bengali documents —means "*To begin with.*"

KARKUN—A Zeminder's officer.

KARPARDAJ—Agent

KARSA *also* *sthahee* *larsa* (দায়ী কর)—May or may not mean permanent and heritable interest 19 C W N 1129.

KARTA—Head man of a Hindu family Ref 23 C. W N 700

KSAHMINKALE (কস্মিনকালে)—At no time

KAT (কাত)—As per, *e. g.*, " .. টাকা জমাব কাত" ।

KATHA (কাঠা)—Land measure equal to 720 square feet

KAT-KANA—A kind of under-lease

KAT KOBALA, see "Kot-kobala," Read 25 C L J. 560.

KAT-KANADAR—One who holds "Katkana" lease.

KERHYA—Rent

KETA—Plot, piece

KHAID (খাইদ)—Ditch, alloy

KHAI-KHALASI—Usufructuary mortgage by which the debt in part or whole is satisfied out of the income of the mortgaged property in possession of the mortgagee.

KHAJANJI—Cashier.

KHAJNA—Rent.

KHELAP (খেলাপ)—Default, *e. g.*, "Kist1 khelap." False ; violation.

JOTH BANDHAKI (জোতবন্ধকী)—Usufructuary mortgage

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KANUN (কানুন)—Law regulations in force

KHESA-RAT (খেসারত)—Damage

KHID MOTH—Service.

KHIL-JAMI—Fallow land which may be brought under cultivation.

KHOD (খোদ)—Personally

KHOLASA—Release, abstract, clear *e q.* *!kholasa husab*—clear accounts

KHONDA—Land on which *robi* crops are grown.

KHORAKI—Diet money

KHORID (খরিদ)—Purchase

KHORPOSH (খোবপাশ)—Maintenance granted by one to another

KHOS—Sweet will.

KHOS KHARID—Purchase at private sale.

KHOS KOBALA (খোস কোবালা)—Deed of conveyance executed out of free will

KHOSOM—Husband

KHOSHRA—Draft, account paper prepared in Settlement Office *See Rampini's Bengal Tenancy Act, Appendix*

KHOSRHA BAHU—Day book

KHOTIAN (খতিয়ান)—Ledger book; index book.

KHOTOM—To give *finality*

KHOD-KHAST (খোদ খাস্ত) (*raiyyat*)—*Raiyyat* holding land in the village in which he resides; cultivators who actually plough land appertaining to their holding

KHULA—Open, Mahammadan consent. 8 Mad 347; 8 M.

KHUNT (খুন্ট)—Agree with; account kept in landlord's

- KINARA—Boundary; limit to find means, *c. ff.*
 “किनावा दरिद्रा दिव”
- KISMOTH—Part of a *mouja*.
- Kist—Instalment. (Read 10 C. W. N. 201.)
- KISTIBANDI (किश्तिबन्दी)—Payable according to fixed instalments; instalment bond.
- KITA—Small plot of land
- KOBALA—A conveyance.
- KOBUL—To admit; to confess
- KABULIAT—Counterpart of a lease
- KORCHA—Accounts in Zeminder's office showing *jamas* held and amounts due from tenants in respect of their *Jamas*.
- KORFA—A *raiya*t within the meaning of the Bengal Tenancy Act It may include both *raiya*t and under-*raiya*t. 21 C. W. N. 452 and 505
- KOSHBA—Town.
- KOSHBI—Prostitute.
- KOSOM—Solemn affirmation.
- KOSUR—Guilt, offence, excuse.
- KOT—Terms, condition.
- KOT-KOBALA (কট কোবালী)—Mortgage by conditional sale. Read 25 C. L. J. 560.
- KOUT—Deed of admission.
- KOYAL—One who measures paddy.
- KROAK—Attachment.
- KROAK-SAWAL—An officer of Court kept in charge of property attached.
- KULACHI-NAMA—(कुलाचीनामा)—Genealogical table.
- KUT (कुट)—Estimate.

L

LABEJAN—Almost out of life

LACHAR—See "*Nachar*"

LADABI—See "*Nadabi*"

LAGAEDH—See "*Nagath*"

LAGAR—Continuous

LAIEK (লায়েক) Fit

LAIEK JAMI (লায়েক জমী)—Land fit for cultivation

LABJA (লজ)—Joined

LAKHERAJ (লাখেরাজ)—Rent free land Ref 19 I C
548 [La = No Kheraj = Rent So Lakheraj =
Rent free] See Regulation XIX of 1793

LAKHERAJ-DAR—One who holds rent free land

LALJAMI—First class paddy land

LASH—Dead body

LAT—Lot

LAT-BANDI—Papers relating to auction sale generally
held for default of revenue or rent

LATKANA (লটকান)—Affixed, *e g*, used in connection
with service of processes or notice

LAWA-JIMA Account papers of tenants, lands, etc.,
kept in a Zeminder's office

LAWARISH—See "*Beuarish*"

LOPTA—Adjoining *e g*, লপ্তজমী—adjoining plot of land

M

MADAD-MASA—Allowance generally granted for pur-
poses of maintenance royal grants

MAF—Excuse

MAFFASIL—Interior as opposed to head quarters

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 “বিনাশ করিয়া দিব”

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MAFFASIL—Interior as opposed to head quarters "
8 W. R. 399.

MAFFLES (मल्लस) —An insolvent, a pauper.

MUEFUSAL—Interior

MUFFUSAL-JAMA—Gross rental (i. g., exclusive of cesses, etc.)

MAFICK—Alike, similar to, according to law.

MAHAL—A parcel or parcels of land separately assessed with land revenue

MAHANTA—Trustee of endowed property or 'Math'
See *Ref* as to his powers—22 C W N 841; 25
C. L. J. 116; 28 C. L. J. 476

CHFLA—is disciple of a *Mahanta* 18 C. W. N. 59,
41 Mad 124.

MAHABAT—Cluster of villages or mahals

MOHAR—Dower—*Ref* in 8 All 149

MAHAR UL-MUAJJAL—Prompt dower payable on demand by Mahammadan husband to wife—*Ref* in 1 All 506, 483; 19 W R 315; 23 Mad 371

MAHAL-UL-MUW AJJAL—Deferred dower payable by Mahammadan husband on demand by wife after dissolution of marriage *Ref* in 1 All 506, 483

MAJUBAT—Grounds of objection, i. g., same as "*Ajuhut*"

MAKRARI—See *Mukorari*, permanent lease. This right escheats to the Crown on failure of heir—1 Cal 191

MAL—Revenue payable to the Collector, goods

MAIGUZAR—A person who pays land revenue for an estate

MAIK—Owner, may mean a raiyat or a tenure holder or even a proprietor—52 I C. 314

MAIKANA—Money payable to proprietors of a Zamindari. It is not rent. 8 C. L. J. 300

MALIKI-SATTA (মালিকী স্বত্ব)—Right of a proprietor.

MAMLA—A suit, affair.

MAMUL—Long-standing custom or usage.

MAMULI—Old and prevalent.

MANHANI (মানহানি)—Defamation.

MANJUR—To grant.

MARFAT (মারফত)—Through, by the hand of.

MARHOCHA—An illegal cess levied by Zaminders at the time of their tenant's marriage

MASA HARA—Allowance payable every month.

MASUL—Fare, tax, duties

MATH (মঠ)—Monastery, See Ref 44 Mad 283 P C

MATHOT—A kind of tax levied by Zaminders on their tenants, an illegal cess

MATWALI—Manager of wakf property. A female cannot be Matwali where Matwali is required to do religious duties. 34 Cal. 118.

MAURASI (মৌরাসী)—Right of occupancy which is heritable Same as Mirash which means inheritance by heritability. 27 C. W. N. 1037.

MAURASI-MOKARARI PATTA—Permanent and heritable lease granted by a landlord to his tenant.

MAURASI-PATTA—Heritable lease granted by a landlord.

MAUZA—Parcel of land bearing a separate name in the land-revenue records of a Collector.

MEHANAT—Labour.

MEHANAT-ANA—Remuneration.

MEHERBANI—Mercy; a friendly term.

MELA (মেলা)—A place where market is periodically held Profit of mela is not rent Vide 11 ~ W. N. 1053

MERAMAT—Repair

MIAD (মীয়াদ)—Allowed period ; term of lease ; Process fee

MIADI-IJARA—Ijara for a fixed period

MIADI-PATTA—Lease granted for a fixed term.

MICHL—Record.

MINAHA (মিনাহ)—Reduction.

MIRASH—Passing from generation to generation ; hereditary, e g, same as "Mourasi" Raiyati right may be *Mirash* right 27 C. L. J. 298, 18 C. L. J. 334

MIRASH PORTTO—Permanent ; heritable and transferable 27 C. W. N 1037.

MOAJI—The sign used before figures indicating land measure ; total quantity of land.

MOBLOG—Total

MOBLOG BANDI (মবলগবন্দী)—Acknowledgment of debt on adjustment of account

MOBLOGAY—(মবলগে)—Altogether

MODIUN (মদিউন)—Judgment-debtor

MOFAT—For nothing

MOHAFFEJ—A record-keeper.

MOHAJAN—A money-lender.

MOHATRAN (মহাত্রান)—Land granted rent-free to non-Brahmans.

MOHOKUMA—Sub-division

MOHA-MOHIMA (মহামহিম)—Form of respectful address used in Bengali documents means "High in Dignity"

MOHARER—Clerk.

MOJAHM (মোজাহেম)—Claim ; objection.

MOJKURI-TALUK—A subordinate taluk under a zemindari.

MOJURA—Abatement

MOKAD-DAMA—Suit

MOKAR-RAR (মোকরার)—To appoint

MOKAM—House

MOKA-RARI (See Makrari) (মোকরারী)—Having a fixed rental which cannot be enhanced. 12 C W. N. 175 ; 8 C. L. J. 525

MOKKEL—Client

MOKUF—Stopped suspended, excused.

MOOD-DAR (মুদত)—Fixed time

MOONSHI—A scribe, a writer, a clerk.

MORAI—Paddy granary

MOOSAMA (মুসমা)—Proportionate abatement; abatement

MOSTAFER—One who holds a lease.

MOTALAK—Subordinate to

MOUJA—Village See also "*Mauza*."

MOURASI—Passing from generation to generation; heritable

MOURASI-PATTA—Patta granting heritable lease to tenant, *e g*, *Mourasi patta*

MOURAS-DAR—One who holds mourasi-lease—7 C. L. J 284

MUBARAT (মবারত)—A Mahomedan divorce by mutual consent of husband and wife—Ballie, 304

MUCH-LEKA—Recongnizance.

MUDAFATA (মুদাফত)—Former occupant usually used in rent receipts.

MUDDAI (মুদাই)—Plaintiff in a suit.

MUDWALHA (মুদালাহে)—Defendant

MUFFASIL—Same as *Mafasil*. Ref. 8 W. R. 399

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MUFFASIL—Same as *Mafasil* Ref 8 W. A. 399

- MUJ RAIN (মুজরান্)—Grant of rent free lands to Royal musicians
- MUKABILA—To confront
- MUKADDM—Village headman
- MUKTEAR-NAMA—Power of attorney
- MULTUBI—Adjournment
- MUNAFI—Profit
- MUNSEF—Civil Judge (See the Bengal and Assam Civil Courts Act)
- MUO AJJIL (মুও অজিল)—(Same as *Mahar ul muajjal*) deferred dower i e, that so much of dower money which is not payable by a Mahomedan to his wife at the time of marriage either by death or divorce
- MUOJAL (মুওজল)—(Same as *Mahar ul muajjal*) prompt dower payable by a Mahomedan husband to his wife on demand
- MUSABIDA—Draft
- MUSAMA—To set off
- MUSHAA—Undivided share in property whether movable or immovable (See Mahomedan law)
Gift of a Mahomedan of a share in property—
26 Bom 577
- MUSTA GIRI—Cultivable , farming
- MUTFARRAKKA—মুতফারাকা—Miscellaneous
- MUTH—Same as Math Ref 44 Mad 283 P C
- MUTTA—Temporary contract of marriage amongst Mahomedans Ref 31 I C 657

N

- NABALAG—A minor
- NALIS—Complaint , a civil suit

NACHAR—Helpless

NAEB—Officer in a zemindar's Office superior in rank to a gomosta.

NAGAD—Cash money

NAGATH (नागाथ)—Up to

NAGDI—Zamindar's peon

NAJAI (नाजई)—Deficit, cancelled

NAJAR (नाखन)—Premium, bonus, present (Vide 13 W R 307)

NAJARANA—Things presented

NAJAR BANDI—Under surveillance

NAJIP—Same as NAZIR

NAZIP—Officer of Court appointed for process service

NAKOCH (नाकड)—To cancel

NAKAL—Copy

NAKAL-NABIS—Copyist

NAKHERAJ—Same as '*Lakheraj*

NAMANJUR—Reject

NAMA JARI—Registration of name, either in the landlord's office or in the Collectorate

NANKAR—Lands enjoyed by proprietor under special grants from Government for his maintenance

NASTAMI—Wickedness

NATHI (नाथी)—Record

NEG—Landlord's fee—11 Cal 175

NIJ JOT—Lands which are cultivated by a proprietor with his own plough or are reserved for his private use—Vide 8 C W N 751

NIKA—A form of Mahomedan marriage.

NIKAS (निकास)—Adjustment or rendering of accounts

NIKASI POTRA—Liability ascertained after *nikas*

NILAM—Auction

NILAM KHARIDDAR (নিলাম খরিদদার)—Auction purchaser

NILAM HOWLA—See Howla 1 W R 5

NIRIKH (নিরীখ)—Rate of rent

NIRIKH BANDI—A table of rates

NISHAN DAR—Identifier

NISHAN DIHI (নিশান দিহি)—Identification

NISHEDHANGGA (নিষেধাজ্ঞা)—Injunction term used
in plaints while praying for perpetual or
temporary injunction

NIS KAR—Rent free

NOBA SINDA (নবশিন্দা)—A scribe

NOYA ABADI—Recently reclaimed land

NUMBARI MOKADDOMA—Regular suit

NUN KHALASI—Unreserved rent free land less than
50 bighas in area

O

OADA (ওয়াদা)—Time fixed for payment of money
due by a debtor

OAJIB—Reasonable

OAK KA (ওয়াক্কা)—The day of proceeding

OALDA (ওলদে)—Son of

OAPUS (ওয়াপস)—To return

OARFAY (ওয়ফে)—Alias

OSILAT—Mesne profits

OASIL—Realisation

OCHIAT NAMA—Will

OJAR (ওজর)—Plea

OJEBAD--Setting off

OKALAT \AMA--See 'Vakalat nama' Ref 11 C
L J 285

ONDAP--Inside, Zenana

OR WAKIF--Acquainted with

OT BANDI--See 'Ut-bandh,

Osi (असि) Guardian, executor

P

PAYASTEE (पयस्ती)--Alluvial accretion to a land on river side

PAIK -A Zaminder s peon who collects rent

PAIKARI--A tenant who gives share of produce to the landlord Wholesale as opposed to retail *eg*,
“পাইকারী দোকান।

PAI KASTA--A tenant who does not live in the village in which he cultivates land

PAYKHAST (পাইখাস্ত)--A raiyat who holds land in a village in which he does not permanently reside

PAI MAES (পয়মাইস)--Measurement

PAITRICK (পৈত্রিক)--Ancestral

PAI-WAST--Accretion caused by alluvion

PAKA--Permanent

PAKA-KHATA--Permanent account book as opposed to *khasra* or rough account book

PANSERA--Harvest fee (*abwab*)--11 Cal 175

PATIT (*jami*)--Un-reclaimed fallow land

PATTI--Locality

PATTANI-DAR--One who holds *pattam* lease.

PATTAN--leasing out

PARDA NASIN--A lady who does not appear before the Public Ref. 22 C. W. N 147 and 197.

PARTAL (পৰতাল)—Comparison of survey

PARWANA—Process

PATNI—For its meaning see Regulation VIII of 1890

PATTA—A lease granted by landlord to tenant see
Field s Digest page 3 Ref in 10 W R 410

PATTA DATA—A lessor

PATTA GRIHITA—A lessee

PATTA SELAMI—Bonus paid by a tenant in consideration of a lease granted to him by a landlord

PATTI DARI—A tenure held by a number of persons for which each separately pays revenue through the sadar malguzar who represents all the co sharers

PATWARI—A village accountant who keeps accounts of lands and rent payable by tenants in a mauza
Read sec 36 of Reg XII of 1817

PESH—To file to put up for orders

PESHA—Occupation

PESH KAR—Bench clerk of a Court

PETAW—Subordinate

PHAL KAR—Rent payable by a tenant for fruits taken by him of gardens belonging to a landlord

PITRIDATTA STRIDHAN (পিতৃদত্ত স্ত্রীধন)—Property acquired by a female from or through father Ref
12 C W N 924

PIR OTTOR—Rent free land granted for the worship of a Mahammadan idol

POKSHA BHUKTA (পক্ষভুক্ত)—To make a party

POLI—Deposit on river bed

PON FAJILI (পণফাজিলী)—Surplus sale proceeds

PON—Principal money consideration

PROJA—A tenant—21 C. W. N. 505

PRO JAAILI—Letting out to tenant

PROTI BADI—Defendant

PROTI KAR—Relief which can be granted to a party

PUTRA POUTRADI KRAMÆ (পুত্রপৌত্রাদিক্রমে)—for ever, permanently from generation to generation
23 C W N 866, 20 C W N 182

R

RAD (রদ)—Cancel

RAFA (বদল)—Compromise

RAFA NAMA—Petition of compromise

RAHA—High way

RAHAJANI—Rebbery in high way.

RAHA KHARACH—Travelling expenses

RAI (রাই)—Judgment

RAIYAT—Cultivator of the soil, a tenant, a farmer
21 Cal 129

RAIYATI JAMA—Holding of raiyat—2 C L J 10

RAJI—Willing

RAJI NAMA—Deed of compromise, same as *solenama*

RAKAM—Kind

RAO WAJ—Custom, usage

RASADI—Gradually increasing Progressive, *e g.*,
বৃদ্ধি পাইয়া ।

RASID—Receipt

RASUM—Court fees, duties

REHAI—Exemption

RESBATA—Bribe

- RESI (বেসী)—Interest, enhancement
 REWA—An abstract of account giving income and expenditure and profits and losses in any business
 ROAJ (রোজ) —Daily. Daily allowance paid to a labourer
 ROAJ GAR (রোজগার)—Income
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 ROD DO JABAB (রদ জবাব)—Reply
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 RAD (রদ)—Cancel
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- SABUT (সাবুত)—To prove by evidence
 SADAR—Principal place
 SADAR FARDDA—Front page
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SAF-BIKRAYA (সাক বিক্রয়)—Out and out sale.

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SAIR—A kind of land revenue

SAJASEE—Collusive

SAJOWAL—Officer who remains in charge of property attached by Court.

SAKIM—Destination, Address.

SALAMI—Bonus, premium—13 W. R. 307.

SALI-ANA—Yearly

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SALISI—Relating to arbitration.

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SAL-TAMAMI NIKASHI JAMA-KHARCH (সালতামামি নিকাশী জমা খরচ)—Zemindar's account in which annual receipts and disbursements are entered.

SAN—Year.

SANBASAN (সন্বসন)—Year to year. Ref. in 10 W. R. 410

SANAD—Letter of appointment, a document by which grant of land is made

SANAKTA (সনাক্ত)—Identification.

SANAT (সনাত)—For several years, *e. g.*, *Sanat Patit'* *Jam* land lying fallow for a long period

SANI (ছানি)—Second; application for review or retrial.

SANI-BICHAR—Review of judgment.

SANTAN (সন্তান)—A child male or female 21 C. W. N 854.

SAOWAL—Question, interrogation.

SAPINDA—Term of Hindu law One who offers *Pinda* or religious oblations to a departed soul along with others. Ref. 11 C. W. N 345

SAPHINA (সফিনা)—Summons to witnesses.

SARA-BARAHA—To supply.

SAR-HADDA—Boundaries

SARJAMIN—Local

SAR JAMIN-TADANTA—Local investigation.

SARA-KALI—Area.

SARA-KAT—Partnership.

SARA-KHAT—Letter of authority to Amins.

SARANJAM—Materials, preparations.

SARASARI (সরাসরি)—Summary, *e g.* সরাসরি বিচার summary trial.

SARASARI MOKADDOMA—A suit which is tried in a summary way

SARKAR—Government Zemindar

SATHIK (সঠিক)—Definite

SATTA (সত্তা)—Right.

SATTYAPATH (সত্যপাঠ)—Verification.

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SATTER LIKHAN (সতের লিখন)—Record-of-rights

SAYNASI (সন্ন্যাসী)—A Brahmin ascetic 'A Sudra cannot be a *Sanyasi*. Ref. 14 C. W. N 191; 18 C. W. N 59

SEBAET (সেবাত)—One who performs worship of an idol and looks after its properties Ref. 19 C. W. N. 260.

SEEMANA—Boundaries

SELAMI—Premium, bonus

SE-PATANI—An under-tenure of subordinate nature generally transferable Vide 32 Cal 169

SHA-BALAK—A major

SHAHID—A witness

SHALI—A land in which *aman* paddy is grown

SHAMIL—Attached to, included in

SHARIK—A partner

SHAS-MAHI—Half yearly

SHARA KATA (same as Sarakat)—Partnership, to act conjointly

SHARTTA (শর্ত) -Condition

SHAWLA (শালা)—Advice

SHAWLI (শালি)—A kind of paddy measure

SHEHA—An account, in Zemindar's office in which daily income and expenditure are shown An account in which daily collection of tenants is recorded

SHERESTA—Office

SHERESTADAR—Chief ministerial officer of Court

SHIKAMI TALUK -An estate paying revenue through a Zemindar to whose zemindari the estate appertains

SHIKAST—Diluvion

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TAHAKIEK—Enquiry

TAHAMATI—A guilty person

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TAHASIL-DAR—Collector of rent

- TAHARI—Fee payable to a scribe
- TAID—Assistant, pleader's clerk
- TAIDAD—Same as '*Sanad*', valuation.
- TAINITI (ଡେନିତି)—A Zaminder's peon
- TAKAJA—Same as "*tagada*" Demand for payment.
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- TALASTHA (ଡାଲସ୍ଥା)—Land on which a building stands.
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TAHASIL—Collection

TAHASIL-DAR—Collector of rent.

* THAKBASTA-NOKSA—Map prepared by Government at the time of Thabast Survey. Ref 21 C W N. 291

THIKA OR TICCA—In 24 Purgunahs temporary, it means not permanent 23 C W N 201

TAIKA DAR—One who grants temporary lease, a contractor

THOKA—Accounts of tenants in a Zaminder's office.

TICCA—See Thika (23 C W N 201)

TIP SAHI—Thumb impression signature by mark

TOAK (তোক)—A number of *mouzas*

TOOK FARDDA (টুক ফর্দা)—Memo

TOOMAR—Ascertaining of the amount due from a *Gomasta* by local enquiry in presence of tenants

TOOMAR JAMA—Rent settled on the spot

TUKIA RAKHA—To keep memo

TUKRA JAMI—A small piece of land

U

UCHHILA—See '*uchila*'

UDBASTU—Land adjacent to any homestead

UKIL—A pleader, a priest who officiates at Mahamadan marriages

UMAR—Age

UMEDAR—A candidate for an employment

UPA SATTA—Usufruct

USUL (উসুল)—See '*Wastl*'

*This is evidence of possession and title 15 C W N 706, 20 C W N 1028 It is presumed to be correct but it can be rebutted 21 C W N 291 For relative values of Survey and Thak maps Read 19 C W N 565 13 C L J 625

UTBANDI—A kind of tenure in Bengal for which the tenant pays rent according to land actually cultivated by him every year. (See the B T. Act).

V.

VAGARA--Place for depositing dead bodies of animals.

VAKALAT-NAMA--Document appointing a pleader. It must be accepted in writing 20 C. W. N. 283.

VANTI—Distillery.

VAOALI (ভাওয়ালী)—Land for which a tenant pays rent in kind.

VARAH--Rent

VARAT--Same as Barat—See 11 Cal. 221; 4 C. W. N. 3

VARATI—Land formed in river-bed by sand deposit.

VARGADAR (বর্গদার)—Same as *Bargadar*—One who cultivates land and gives a share of the produce to the landlord—He may be a tenant or a labourer Ref. 23 C. W. N. 614; 32 C. L. J. 37.

VATA (ভাত)—allowance

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WADA—Time for repayment

WAGAIRA (ওগার)—And others.

WAJIB—True.

WAKF—Dedication in perpetuity of specific property to charitable or religious purposes—In the opinion of the Calcutta High Court there can be no wakf of moveable property. 10 C. W. N. 449.

WALED—Children.

WAPAS—Returning.

WASHIL—Payment realisation

WASHILAT (ওয়াশীলত)—Mesne profits

WASHIL BAKI—Amount due after crediting sums realised, account in which the said is shown

WARISH—Heir

Y

YAJMAN—Disciple of a priest

YAJMAN-VRITTI—For this Read 59 I. C 271

Z

ZABDA (জব্দ)—Confiscated

ZABETA—Rough *e g* জাবেতা হিসাব।

ZARPESGI—Advance

ZARE PESGI LEASE—Read 10 C W N 351. 2 C
W N 758

ZAMINAT—Security

ZALKAR—See Jalkar

ZAMA—See Jama

ZANKAR (জাঙ্কর)—Suspense account

ZER—Brought forward account

ZEMINDER—Proprietor of an estate paying revenue to Government

ZIRAT—A field or farm actually cultivated

THE
CIVIL COURT PRACTICE & PROCEDURE.

SUPPLEMENTARY

PART IX.

THE PROVINCIAL
Small Cause Courts Act

WITH

SHORT NOTES.

SUPPLEMENTARY PART.
THE PROVINCIAL
Small Cause Courts Act.

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THE FIRST SCHEDULE—[Repealed]

THE SECOND SCHEDULE—Suits excepted from the cognizance of a Court of Small Causes

The Provincial Small Cause Courts Act Act No IX of 1887.

An Act to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency towns

Whereas it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original Civil Jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay, it is hereby enacted as follows —

CHAPTER I

Preliminary

1 (1) This Act may be called the Provincial Small Cause Courts Act 1887

Title extent and
commencement

(2) It extends to the whole of British India and

(3) It shall come into force on the first day of July, 1887.

NOTES

For portions of C P Code applicable to S C Courts see Civil Procedure Code Order L

* * * * *

2 (1) Repeal of Enactments

Repealed by the Repealing and Amending Act 1891 (XII of 1891)

(2) All Courts constituted limits fixed, places appointed, appointments, declarations and rules made, jurisdiction and powers conferred, forms prescribed directions given and notifications published under Act, No XI of 1865 (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil Jurisdiction of the High Courts of Judicature*), or under any enactment repealed by that Act, shall, so far as may be be deemed to have been respectively constituted fixed, appointed, made conferred, prescribed, given and published under this Act

(3) Any enactment or document referring to Act No. XI of 1865 or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof

NOTES

By this section S C Courts and Courts exercising S C Powers existing on the date the Act was passed were recognised and maintained

Savings.

3. Nothing in this Act shall be construed to affect—

(a) any proceedings before or after decree in any suit instituted before the commencement of this Act, or

(b) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchavats under the provisions of the Madras Code, or of Village Munsifs under the Dekhan Agriculturist's Relief Act, 1879, or

(c) any local law or any special law other than the Code of Civil Procedure

NOTES

(1) A Cantonment Magistrate may have concurrent power with a S C Court to try a suit 14 W R 428

(2) *For suits against soldiers see 3 C W N 70*

Laws applicable to Small Cause Courts.

(1) Laws ordinarily applicable in Civil Courts are applicable in S C Courts—13 W R 148

(2) Rules of Military Code are not applicable in S C Courts 5 Bom. H C 99

A Court of Small Causes cannot try suits unless it can take cognizance of the case against all defendants:—

A Suit is not cognizable unless against all defendants—I L R 21 Bom 121

4 In this Act, unless there is something repugnant

Definition in the subject or context, "Court of Small Causes" means a Court of

Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court

NOTES

Civil Courts exercising S C. powers are to be considered as S C Courts for purposes of this Act

CHAPTER II.

Constitution of Courts of Small Causes.

5 (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Local Government may define, and the Court may be held at such place or places within those limits as the Local Government may appoint *

NOTES

Clause (2) refers to touring S C Courts holding sittings at different places—e g (1) S C Courts of Howrah and Hugly (2) of Dacca and Munsiganj etc

6 (1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court

(2) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs

*As regards transfer of cases—a Court vested with S C C powers is same as an S C Court—27 C L J 461

NOTES.

Clause (2)—Places of sittings are notified in Official Gazettes for public information. [Vide clause (2) of sec 7]

<p>Appointment of times of sitting in certain circum- stances</p>	<p>7 (1) A Judge who is the Judge of two or more such Courts {may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge</p>
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(2) Notice of the times shall be published in such manner as the High Court from time to time directs

NOTES

An S C Court within a District is under the administrative control of the Judge of the District

<p>Additional Judge</p>	<p>8 (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes or of two or more such Courts</p>
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(2) The Additional Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same power as the Judge

(3) The Judge may withdraw from the Additional Judge any business pending before him

(4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge

NOTES

An additional Judge, so far as judicial work is concerned may be considered as subordinate to the permanent Judge though in fact he is not so for any other purposes.

9 A Judge or Additional Judge of a Court of Small Causes may be suspended or removed from office by the Local Government

Suspension and removal of Judges

NOTES

As a rule an enquiry is held before the Local Government makes any order under this section

10 The Local Government, after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order

Power to require two Judges to sit as a Bench

NOTES

This section provides for formation of Benches for trying important questions but it is rare in Mofussil

11. (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI of the Code of Civil Procedure shall apply to the reference

Decision of case heard by a Bench

(2) If they differ on any matter other than a matter specified in sub section (1), the opinion of the Judge who is senior in respect of date of appointment

as Judge of a Court of Small Causes or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail

(3) For the purposes of sub section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge

NOTES

Procedure for Reference.

See Order XLVI of C P Code of 1908

What the letter of Reference should contain

It should contain—

- (1) the statements of facts of the case
- (2) the point of law referred
- (3) that the referring Court entertains reasonable doubt on the said point See I L R 30 Cal 458 ,

Reference to High Court.

(1) An S C Court should not make any reference to H C unless it entertains reasonable doubts about the point—14 W R 248

(2) A question of law raised in a suit or proceeding can be referred 11 W R 525

(3) Successor of a Judge cannot interfere with reference made by in his predecessor 7 W R 352

N B—Reference to High Court should be made through District Court—20 C W N 1110

Usages having the force of law.

For this see—1 Cal 186 and 10 Cal. 138

- 12 (1) The Local Government may appoint to a Registrar Court of Small Causes an officer to be called the Registrar of the Court

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court

(3) The Local Government may by order in writing confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees

(4) The Registrar shall try such suits cognizable by him as the Judge, may, by general or special order, direct

(5) A Registrar may be suspended or removed from office by the Local Government

NOTES

Registrar has to perform the double functions—e g (1) of a ministerial officer (2) of a Judge for some purposes *Vide sections 18 to 22*

COPY

Who cannot sign a Copy.

Clerk of S C Court cannot sign—3 W R S C C Ref 7

13 Subject to any enactment for the time being in force and to any orders made by the Local Government in this behalf) the law or practice for the time being applicable to the appointment, punishment and transfer of ministerial officers of a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which a Court of Small Causes is established shall, so far as it can be made applicable, apply to the appointment, punishment and transfer of ministerial officers

of the Court of Small Causes other than the Registrar, if any, of that Court

NOTES

Ministerial officers are under the administrative control of the Judge of the District. The District Judge can punish ministerial officers (other than the Registrar) in cases of misconduct.

14 (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

Duties of ministerial officers

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

NOTES

Different High Courts have framed rules under this section. Ordinarily ministerial officers have no power to do any judicial work. In this respect their position is same as that of ministerial officers of ordinary Civil Courts.

CHAPTER III.

Jurisdiction of Courts of Small Causes.

15 (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

Cognizance of suits by Courts of Small Causes

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court

(3) The Local Government may by order in writing confer upon a Registrar within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees

(4) The Registrar shall try such suits cognizable by him as the Judge, may, by general or special order, direct

(5) A Registrar may be suspended or removed from office by the Local Government

NOTES

Registrar has to perform the double functions—e g (1) of a ministerial officer (2) of a Judge for some purposes *Vide sections 13 to 20*

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of the Court of Small Causes other than the Registrar, if any, of that Court

NOTES

Ministerial officers are under the administrative control of the Judge of the District. The District Judge can punish ministerial officers (other than the Registrar) in cases of misconduct.

14 (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

NOTES

Different High Courts have framed rules under this section. Ordinarily ministerial officers have no power to do any judicial work. In this respect their position is same as that of ministerial officers of ordinary Civil Courts.

CHAPTER III.

Jurisdiction of Courts of Small Causes.

15 (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes

(3) Subject as aforesaid, the Local Government may, by order in writing, direct that all suits of a Civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the orders

NOTES

Jurisdiction how determined

(1) Value given in the plaint determines jurisdiction—I L R 8 Bom 31

(2) Objection to jurisdiction should not be given effect to if the parties have not been prejudiced Ordinarily the court must look to the valuation given in the plaint—I L R 24 Cal 661=1 C W N 556

PROVINCIAL S C COURTS CAN TRY FOLLOWING AMONGST OTHER SUITS

1. Damage Suits

Formerly S C Courts could try damage suits for paddy taken, I L R 17 Cal 707, for injury done to a mill, against a Railway, 17 Cal 200, for injury done to a house etc., but under the present law [vide Sch II Art 35 (1)] an S C Court cannot try suits which involve criminal offences punishable under chapter XVII of the Indian Penal Code

An S C Court can try suits for damages for loss of insured article 28 Mad 213

Note—Exceptions S O Court cannot try damage suits—

- (1) for breach of contract of marriage—I L R 15 Cal. 833
- (2) for obstructing water course—I L R 18 Mad 28
- (3) for malicious prosecution—I L R. 14 Bom 100

II Suits regarding purchase money

(1) A P's suit against D H for price of property sold at auction on the ground that J D had not saleable interest—I C W N 140 but see I L R 28 Cal. 235

(2) Private purchaser's suit against vendor for refund of purchase money if the vendor had no title to the land sold—4 C W N 63

III Suits for mesne profits

Suits for mesne profits—I L R 23 Cal 884 F B

IV Suits for money due on adjustment of accounts.

If the defendant agreed to pay a certain sum on adjustment of accounts otherwise not—I L R 21 Mad 366 A suit for recovery money over paid 2 All. 671

V For money taken by Police.

Suit for money taken by Police as stolen property after plaintiff's acquittal—I C L J 355 9 C W N 495

VI Suits for use and occupation

Suits for use and occupation of land based on contract—I L R 17 Cal. 541

VII. Suits for taxes

Suits for Municipal taxes—I L R 23 Cal 835

VIII Damage suits for trees cut.

(Ordinary)

(1) Suit for damages for trees cut from plaintiff's land could be formerly tried—even if defendant denied plaintiff's title to the land—37 Bom 675 F B but now such cases are
Vide Sch II Art 35 (ii) Vide 23 C W N notes ccvii and 23 C W N cxxxv 27 C L J 28

(*Between Landlord and tenant*).

(2) Suit for damages for trees cut and appropriated by a tenant from his holding—5 C. L. J. 413 followed in 13 C. W. N. 1025=11 C. L. J. 98 Similar suit when trees cut in contravention of contract to the contrary between landlord and tenant—26 Mad 176 followed in 36 Cal 130 (These suits are even now triable by S. C. Court). Vide 19 C. W. N. 872, 23 C. W. N. 207 (notes) and 23 C. W. N. CXXXV

(3) Suit by a tenant against landlord for damages for illegal realisation by the latter of a portion of the price of trees cut by the former, 4 All 19

IX. Damage suits for wrongful acts in Execution Proceedings,

Suit for damages against a decree-holder for wrongful acts done under cover of execution proceedings—6 C. L. J. 527.

X. (a) Suit for recovery of money illegally realised as Municipal Tax :

Such suit lies in S. C. Court & S. C. Court can hold that assessment was *ultra vires* —27 C. L. J. 379

(b) Suit for *Barga Produce*.

Suit for *Barga Produce* when the defendant acted as a mere labourer or servant under plaintiff, 14 C. W. N. 629, otherwise not

XI. Suit for *mesne Profits* as damages in special cases.

(1) Suit for *mesne profits* realisable under the terms of a *Kobala*—12 C. W. N. 599.

(2) By a mortgagor against a mortgagee in a redemption suit—14 C. W. N. 1001—See 34 Cal. 636

Note—When the plaintiff is out of possession no suit lies for damages—See 18 Cal. 31; 21 Cal. 244, 17 C. W. N. 324

XII. Suit for refund of purchase-money by auction-purchaser—when lies and when not.

Suit for refund of purchase money lies where the judgment-debtor had no saleable interest in the property—1 C. W. N. 140

(*Vide* No 11) but no suit lies in any Court if the judgment-debtor is found to possess some interest in the property—28 Cal 235

XIII. Suit by a decree-holder against co-decree-holder for decree-money.

Suit by a decree-holder against co-decree-holder for realisation of his own share of the money realised by the latter; 7 All 896 See 18 W. R 104

XIV. Damage suit by *Shebait* for goats sacrificed.

Suit for damages by a *shebait* for unlawful taking away of goats sacrificed at the altar of a goddess—even if *shebait's* title is disputed,—which may be incidentally decided—15 C W N 666

Miscellaneous Cases.

A Court of Small Causes can try following suits.

(1) *A suit cognizable by a village Munsif*—5 Mad 45 An S C. Court has concurrent jurisdiction in such cases, 13 Mad 145

(2) *Suit on bond*—for recovery of any interest due under its terms even if the bond be for amount exceeding jurisdiction of S C Court, 2 Mad. 440, 2 Mad 469

(3) *For profits of land*—even if questions of title or accounts are incidentally raised—1 L R 21 Bom 248.

(4) Suits not mentioned in the Schedule II

Can different Causes of action be combined in an S. C. Court ?

(4) *Yes*—if the total claim is within the pecuniary jurisdiction of the S C Court 5 Mad 287, 4 Mad 334

Jurisdiction.

Pecuniary—abandonment of a part of the claim to bring the suit under S. C. C Jurisdiction

A plaintiff can abandon a portion of claim and file suit in S C. Court, 1 L R 9 Cal. 473

Note—If suit is in part triable by S C Court, see 13 W P

Exaggerating claim for bringing the case within ordinary Jurisdiction—if allowable.

This is not allowable—10 B L R 193 See 3 C L J 143, 1 C W N 556

Splitting Cause of action.

Not permissible—I L R 2 Bom 570

Part payment—if denied by defdt —and if without such payment claim exceeds pecuniary Jurisdiction of S. C. Court.

Part payment to be enquired into by S C Court Such a suit is triable by S C Court inspite of defendants objection, 4 Bom O. C 133

Note—A suit not mentioned in Schedule II, is triable by an S C Court See Sch II with notes

Suits not Triable by S. C. Courts.

(A) Rent and Damage suits

(1) *Rent suits*—for agricultural lands—see B T Act

(2) *Suit by an assignee of arrears of rent*—I L R 27 Cal 827 F B.=4 C W. N 357, 19 C W N 458

Note—Exception—A tenant can sue his landlord in S C Court for recovery of excess rent realised—4 C W N 95

(3) *Suit for rent of homestead land* is not triable in S C Court—(unless the Judge is specially authorised to try such suits)—I L R 15 Cal page 174 See Notes on Schedule II clause 8

(4) *Suits for rent by grantor of forest rights*—19 C W N 415.

Note.—Definition of rent fully discussed in 19 C. W. N 415

(5) *Suit for recovery of Barga produce* where the defendant is not a mere servant of the plaintiff but is his tenant 14 C W N 629

(6) For price of share of crop when the tenant did not cultivate the land (it is a rent suit)—16 C W N 89—Read 14 C. W N 629

(7) Suit for damages for trees cut from plaintiff's land by outsider—23 C W N. notes ccvii and 27 C L J 28 20 C W N 216 (notes) 23 C W N 647

If S C Court usurps jurisdiction not vested in it—the remedy lies in Revision by High Court 27 C L J 594

(B) Suits for contribution

Such suit is not ordinarily cognizable by S C Court—I L R 23 Cal 189

Note—Suit by defendant for costs paid which was payable by himself along with others can be tried by an S C Court—I L R 15 Cal 713

(C) Suits for maintenance.

Such suits do not lie in S C Courts even if the amount be a fixed one—I L R 15 Cal. 164

(D) Account suits.

Such suits are not triable by S C Court—I L R 21 Mad 366

(E)

For recovery of money taken by police as bribe.—formerly cognizable, *vide* 15 C L J 219, but not cognizable after the new amendment of 1914 See statement of objects and reasons and *vide* note to clause 35 (ii) Sch II

16 Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable

Exclusive jurisdiction of Courts of Small Causes

NOTES

(1) A suit is not cognizable by S C Court *unless* it cognizable by it as against all the defendants—I L R Bom 121

(2) Suit filed in the regular side cannot be transferred to S C C file because *Judge* has been *subsequently tested* with S C C power up to a *higher value*—I. L. R. 26 Mad 212 F. B referred to in 20 C L J 141 An S C C. suit valued at Rs 90 was transferred to the money file by a Munsif having powers up to Rs 50, his successor with 100 Rs S. C. C powers tries it as an S C C suit—High Court declined to interfere

(3) Question of *jurisdiction* can be decided by High Court in reference I L R 21 Cal 249

(4) An officer cannot try suits up to a certain value under S C C procedure *unless he had that power* up to that limit at the time of the *institution* of the suit or unless he is specially authorised in this behalf I L R 26 Mad 212

(5) High Court interferes in revision if an S C Court exercises *jurisdiction not vested in it*—I L R 33 Mad 323 even if the objection to jurisdiction is taken for the first time in High Court 6 C L J 218

(6) An S C C suit filed before an officer with S C C powers can be tried by an officer without S C C powers like a regular suit 12 C W N 167

(7) If filed before an officer without S C C power—his successor with S C C powers can try like a money suit 51 I C 967

Transfer of S C C. suits to any other Court— procedure of trial in such Court.

Under Section 24, Clause 4 of the Civil Procedure Code—'The Court trying any suit transferred under that section 'from a Court of Small Causes shall for the purposes of such a suit be deemed to be a Court of Small Causes This rule applies to cases transferred from Courts vested with S C C powers 35 Cal 677

Note—No appeal will lie against the decision in any such case so transferred and tried

CHAPTER IV.

Practice and Procedure

*"The procedure prescribed in the Code of Civil Procedure, 1908, shall, save in so far as is otherwise provided by that Code or by this Act" * * * *
be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits

Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section 145 of the Code of Civil Procedure (Act V. of 1908) †

NOTES (A)

(1) See Order L of the C P Code for the portions of C. P. Code applicable to S C C cases

NB—For notes and rulings on the portions of C. P. Code applicable to S. C. Courts consult C. P. Code

* This section has been amended by Act I of 1926. The said Act is given in the end

† By the amended Act I of 1926. A Court of Prov. Small Causes cannot attach immovable property.

(A) Application for setting aside *ex parte* decree in S. C. Court.

(a) The applicant at the time of filing the application must deposit the decretal amount or furnish security to the extent of the decretal amount—I L R 18 Cal 83 When such amount was not deposited with the application but the applicant subsequently deposited the amount or furnished security within the limitation period (30 days under Art 164 Sch II Limitation Act) the application was tried on the merits, 14 C W N 102, I L R 32 Cal 339=1 C L J 43, 24 C W N 380, 26 C L J. 315, 43 Mad 379 No fresh deposit is needed if once the decretal amount is deposited in the executing Court 8 C W N 355 *Ex parte* decree cannot be set aside if the deposit be short 33 I C. 133

(b) Same rule—even if *ex parte* decree is passed at an adjourned hearing 23 Cal 738 F B

(c) Same rule also—in case of *ex parte* order under sec 47, C P C which are considered as decrees—3 C L J 276

(B) Review—Limitation.

Application for review can be presented within 15 days—vide article 161, Sch 11 of the Limitation Act

(C) Restoration of S. C. cases dismissed for default.

Plaintiff is not required to furnish security or deposit decretal sum for filing an application for setting aside an order of dismissal—2 C W N 693 23 C L J. 147

(D) Attachment.

When an S C Court cannot attach debt outside jurisdiction.—I L R 6 All 243

(E) Award.

An award can be filed in S C Court—I L R 3 Bom 219

(F) Re-trials and Reviews.

Re trial by another Judge

Successor of a Judge can order new trial of a case tried by his predecessor—I L R 6 Cal 236. See also Judgment of Fletcher and Newbould JJ 21 C W. N 160 notes

Note—For grounds of new trial—e.g., fraud, discovery of new evidence, date of hearing not known etc.—read 17 W. R. 48; 19 W. R. 130, 18 W. R. 454 2 Bom 67 and 10 C. W. N. 286, but miscalculation of time is no ground—1 All. 250

(G) Review by another Judge.

Can be made 1 L. R. 13 Mad. 178

(H) How much of decree to be set aside at ordering new trial

Part (as against the applicant) or whole of decree as against all defendants including those who do not apply for new trial may be set aside 15 W. R. 371

(I) Is fraudulent confession of judgment—a ground for new trial?

Yes —17 W. R. 48 See 3 C. L. J. 158

(J) Mistake of date—if ground for new trial.

May be —18 W. R. 454 Negligence of pleader's clerk to inform the date may be good ground 2 Bom 67

(K) Can a defendant who entered appearance but could not attend at the trial apply for new trial?

Yes —1 L. R. 4 Cal 318, see also 23 Cal 738 F. B

(L) Deposit of decretal money and costs—for new trial

(1) This should be done *with the application*. 14 W. R. 42

(2) Even if the decree allows *payment by instalments* 5 Bom A C 70

(3) *Plaintiff—not to deposit costs* when applying for a new trial, 18 W. R. 446

(4) *Deposit is a condition precedent*—Applicant must either deposit decretal amount or furnish security 1 L. R. 18 Cal, 83 14 C. W. N. 102

(5) See 1 L. R. 32 Cal 339 referred to in (A).

18. (1) Suits cognizable by the Registrar under Trials of suits section 12, sub-sections (3) and (4), by Registrar shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge, if any Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar

NOTES

Registrars of Provincial Small Cause Courts can ordinarily try contested suits up to the value of Rs 20 In special cases powers of Registrar may be increased up to a higher pecuniary limit

19 (1) Where the Judge of a Court of Small Causes is absent, and Additional Admission return and rejection of plaints by Registrar Judge has not been appointed or, having been appointed is also absent, the Registrar may admit a plaint or return or reject a plaint for any reason for which the Judge might return or reject it

(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him

Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted, or returned or rejected the plaint, the Judge shall dismiss the application

unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting

NOTES

(1) A plaint may be *rejected* on the grounds stated in Order VII, Rule 11

(2) S C Court *cannot reject* a plaint after it has been registered—I L R 8 Cal 192. See *contra* I L R 12 All 553

(3) If deficit court fee is called for by the Court—the *date of presentation* of the plaint should be considered as the *date of institution*—I L R 19 Cal 780 see also 4 C W N 818*.

(4) The first sitting means the first day on which the Judge sits for the first time after the Registrar's order—7 I C 578

Note—The plaint may be rejected on other good grounds not stated in the C P Code—I L R 13 Cal 189

20 (1) If before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge

Passing of decrees by Registrar on confession

(2) Where a decree has been passed by the Registrar under sub section (1) the Judge may grant an application for review of judgment, and re-hear the suit on the same conditions, on the same grounds and in the same manner as if the decree had been passed by himself

*If a suit is dismissed for non payment of Court fees—the Court cannot attach properties of the defendant for realisation of costs of Court fees due—46 Cal 520

NOTES

A judgment or confession may be set aside as an *ex parte* decree if there was fraud or false personation—17 W R 48 for principle see 3 C L J 158

21 (1) If the Judge is absent, and an Additional Judge has not been appointed or, Execution of decrees by Registrar having been appointed, is also absent, the Registrar may subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub section (1) or the Additional Judge, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by the Judge under this sub section may of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order

(3) The period of fifteen days mentioned in sub section (2) shall be computed in accordance with the provisions of the Indian Limitation Act (Act XV of 1877) as though the application of the party were an application for review of judgment

NOTES.

(1) For the contents of an application for execution see C P. Code Order 21, Rule 11

(2) S. C Court cannot attach immovable property vide Act I of 1926

S. C. Court has jurisdiction to do the following in execution.

(1) Can execute decree beyond jurisdiction by following procedure laid down in C P Code—16 W R 227

(2) Can sell undivided share in movable property—5 Mad 275 Can attach mortgage decree—44 I C 252

(3) Can attach salary—I L R 6 All 243

NB—As a rule S C Courts can attach and sell movable properties in execution

Transfer of execution proceeding from S. C. Court to another Court

(1) Execution proceedings can be transferred to any Civil Court for attachment and sale of landed property I L R 7 Mad 592

(2) Can be transferred to the Court s General Jurisdiction I L R All. 624 (In this connection see Sec 33 and notes thereunder)

22 When the Judge of a Court of Small Causes is

absent and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof

NOTES

But a chief ministerial officer cannot pass any judicial order He can simply pass orders adjourning cases

23. (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under subsection (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure (Act XIV of 1882) and make such order with respect to costs as it deems just and the Court shall, for the purposes of the Indian Limitation Act (Act XV of 1877) be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction

NOTES

(A)

Return of plaint, its effect. etc.

(1) Under this section an S C Court can return a plaint for presentation to Civil Court where the plaintiff's title to the property is denied 1 P. L. J 465, 23 Mad 547 25 Cal 425 The plaint may be returned under this section at any stage

(2) Even if a question of title is raised in an S C C suit that does not oust the jurisdiction of the S C Court, and the character of the suit is not altered even if the plaint be returned under sec 23—L. L. R 24 Cal 557 followed in 6 C W N 687 3 Mad 192 F B See also I L R 20 All 80 An S C C Court can incidentally decide questions of title and possession. 23 C W N 647 17 Cal 707, 16 C W N 288 (See the tree-cutting case 37 Bom 675 F B)

(3) Suits for recovery of movables lie in an S C Court, 12 C W, N 155. Plaints may be returned—14 C L J 118, 19 C W, N 614

(4) If the District Judge transfers an S C C Case to another Court the suit must be tried as an S C C suit 38 Mad 25

(B)

Presentation of a plaint after return by a Judge.

(1) A plaint to be presented to proper Court as mentioned in sec 13 or transferred to the original file of the same Court 45 I C 645 Read 38 Bom 190

(2) A plaint cannot be again presented in the same Court which returned it even if presided over by another Judge I L R 20 Bom, 283

(3) When a plaint is returned by S C Court for presentation to the proper Court the latter Court where it is filed cannot again return it. That Court if it entertains doubts can refer the matter to High Court for decision—18 C W N 380 21 C W N 784 27 C L 97 27 I C 751

(C)

Character of suit—if changed after return of plaint under sec. 23.

(1) A suit none the less remains an S C C suit even if the plaint be returned under this sec I L R 24 Cal 557 followed I L R 20 All 480. But the decree passed after return may become appealable

(2) If the plaint is not amended before presentation for determination of question of title—such question incidentally decided at the trial will not operate as *res judicata* for principle. See 6 C W N 617 and I L R 3 Cal 612 3 Mad 192 F B 25 Bom 625 at 628

(D)

Trial of S C. C. case in regular side by

(1) A case triable in S C C jurisdiction of a Court if tried by mistake like an ordinary suit is *not appealable* I L R 417, 55 I C 642, 40 Cal 537 24 C W N notes 83

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Return of plaint, its effect etc

(1) Under this section an S C Court can return a plaint for presentation to Civil Court where the plaintiff's title to the property is denied 1 P L J 465 23 Mad 547 20 Cal 425 The plaint may be returned under this section at any stage

(2) Even if a question of title is raised in an S C C suit that does not oust the jurisdiction of the S C Court and the character of the suit is not altered even if the plaint be returned under sec 23—I L R 24 Cal. 557 followed in 6 C W N 687 3 Mad 192 F B See also I L R 20 All 80 An S C C Court can not decide questions of title and possession 23 C W N 647 17 Cal 707 16 C W N 283 (See the tree cutting case 37 Bom 675 F B)

(3) Suits for recovery of movables lie in an S C Court 12 C W. N 155 Plaints may be returned—14 C L J 118 19 C W. N 614

(4) If the District Judge transfers an S C C Case to another Court the suit must be tried as an S C C suit 38 Mad 25

(B)

Presentation of a plaint after return by a Judge.

(1) A plaint to be presented to proper Court as mentioned in sec 13 or transferred to the original file of the same Court 45 I C 645 Read 38 Bom 190

(2) A plaint cannot be again presented in the same Court which returned it even if presided over by another Judge I L R 20 Bom 283

(3) When a plaint is returned by S C Court for presentation to the proper Court the latter Court where it is filed cannot again return it That Court if it entertains doubts can refer the matter to High Court for decision—18 C W N 380 21 C W N 784 27 C L 97 27 I C 751

(C)

Character of suit—if changed after return of plaint under sec. 23.

(1) A suit none the less remains an S C C suit even if the plaint be returned under this sec I L R 24 Cal 557, followed I L R 20 All 480 But the decree passed after return may become appealable

(2) If the plaint is not amended before presentation for determination of question of title—such question incidentally decided at the trial will not operate as *res judicata* for principle See 6 C W N 617 and I L R 3 Cal 612 3 Mad 192 F B 25 Bom 625 at 628

(D)

Trial of S C. C. case in regular side by mistake.

(1) A case triable in S C C jurisdiction of a Court if tried by mistake like an ordinary suit is *not* appealable I L R 25 Bom 417 55 I C 642, 40 Cal 537, 24 C W N notes 83

(2) An S C C. suit can be tried like a regular suit by a Munsif having no S C C power—12 C W N 167

(E)

Revision by High Court.

An order returning a plaint passed under this section is ordinarily not interfered with in revision by the High Court 13 C W N 403, though the High Court has power to interfere in suitable cases 15 C W N 666 1 P L J 465

24 Where an order specified in section 588, clause (29) of the Code of Civil Procedure (Act XIV of 1822) [Sec 104 cl (h) of the C P Code of 1908] is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court *on any ground on which an appeal from such order would lie under that section* *

NOTES

(1) Order enforcing penalty under the Stamp Act is not appealable—I L R 5 Cal 311

(2) Clause (29) of sec 583 of the C P Code of 1882 corresponds with sec 104 of the C P Code of 1908 This provision relates to fines imposed by S C Courts

(3) See section 27 Besides the above *orders* as to fine—no other order passed by an S C Court either in suit or in execution proceeding is appealable

(4) A Judge with S C C powers trying a proper S C C suit under ordinary procedure by mistake—decree not appealable—I L R 25 Bom 417 Read I L R 40 Cal 537—Orders passed in such cases *are also not appealable*

25 The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law,

Revision of decrees and orders of Courts of Small Causes

* The italic portion was added by Act IX of 1922

may call for the case and pass such order with respect thereto as it thinks fit

N B.—Judgment of S C Courts should be clear and not too short, incapable of being understood—41 I C 873—must contain short reasons—59 I C 906

NOTES

(1) *An error of law or procedure confers jurisdiction upon the High Court to exercise its powers under this section*—I L R 21 Bom. 250 5 C L J 413

(2) *An order of S C C Judge admitting review can be revised under this section*—I L R 13 Mad 178

(3) *If S C C judgment is too vague without any finding H C can revise the same* 23 Bom 334

(4) *If S C Court has committed error on the point of limitation H C can interfere* 3 I C 817

(5) *An aggrieved party may {move the District Judge under Order XLVI Rule 7 to submit to High Court for revision an order of an S C C Judge erroneously exercising S C C jurisdiction in any suit or having failed to exercise S C C jurisdiction where it should have exercised such jurisdiction The High Court has power to consider the question of jurisdiction and to deal with the case on the merits*—I L R 21 Cal 249

(6) *If the District Judge fails to state his reasons the High Court may return the reference*—I L R 23 Cal 423

(7) *Where substantial justice has been done High Court refuses to interfere* I L R 11 Cal 6 8 A L J 929

(8) *Interlocutory orders of S C Courts before final decision are not ordinarily interfered with in revision*—I L R 14 Cal 768, 18 Bom 25 23 Mad 169

(9) *For revision of order returning a plaint under section 23 see* 15 C W N 666

Note—This section applies only to cases triable by S C Courts; 3 C W N 70

26. [*Amendment of the second schedule to the Code of Civil Procedure*] *Rep s 4 of Act X of 1888*

27 Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final

Finality of decrees and orders

NOTES

(1) The decree or order is final even if such a suit is tried in the ordinary way by mistake 40 Cal 537, but it may be revised by High Court under sec 23—I L R 24 Bom 310, 48 Cal 298 34 Bom 171

(2) See section 24 for cases—where appeal is allowed

CHAPTER V.

Supplemental Provisions

28 (1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall—

Subordination of Courts of Small Causes

(a) keep such registers, books and accounts as the High Court from time to time prescribes, and

(b) comply with such requisitions as may be made by the District Court, the High Court or the Local Government for records, returns and statement in such form and manner as the authority making the requisition directs

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try

an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which the Court of Small Causes is established

NOTES

Under this section District Judges have administrative control over S C Courts within their jurisdiction. An S C Court is considered as a Court of the lowest grade—for principles, vide I L R 16 All 11

29 A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government

NOTES,

This refers to big seals used for ordinary purposes. A different seal containing date is also used in S C Courts as in ordinary Civil Courts

Abolition of Courts of Small Causes 30 The Local Government may, by order in writing, abolish a Court of Small Causes

NOTES

Orders abolishing S C Courts are ordinarily notified in the local official gazette (See section 37)

31. (1) Nothing in this Act shall be construed to prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court or to be a Magistrate of any class or to hold any other public office

(2) When a Judge or Additional Judge is so pointed, the ministerial officers of his Court 's'

subject to any rules which the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office

NOTES

(1) Under this section an S C Judge if he is also a Subordinate Judge capable of exercising appellate powers can hear appeal transferred to him by the District Judge [This is done at Sealdah Hugly and Howrah and also at Dacca in the Province of Bengal]

(2) On the above analogy such a Judge can also hear original suits transferred to him for trial after institution in ordinary Court [This is rather rare]

32 (1) So much of Chapters III and IV as relates to—

Application of
Act to Courts in
vested with juris-
diction of Court of
Small Causes

(a) the nature of the suits
recognizable by Courts of Small
Causes,

(b) the exclusion of the juris-
diction of other Courts in those suits,

(c) the practice and procedure of Courts of Small
Causes,

(d) appeals from certain orders of those Courts
and revision of cases decided by them, and

(e) the finality of their decrees and orders subject
to such appeal and revision as are provided by this
Act,

applies to Courts invested by or under any enact-
ment for the time being in force with the jurisdiction
of a Court of Small Causes so far as regards the
exercise of that jurisdiction by those Courts

(2) Nothing in sub-section (1) with respect to
Courts invested with the jurisdiction of a Court of

Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction

NOTES

(1) This section governs the procedure to be followed by ordinary Civil Courts invested with S C C powers. The procedure is same as in S C C Courts

(2) Though in fact such Courts are not proper S C Courts. I L R 3 Bom 219

(3) Provisions as to appeal also apply to such Courts under this section as in ordinary S C Courts

(4) Power of the S C C Judge at the time of institution of the suit determines how a suit is to be tried, i.e. whether as a regular suit or under the Court's S C C power. Subsequent extension of the jurisdiction of a Judge up to higher value after institution of the suit does not empower the Court to try such a suit up to higher value under S C C Procedure 20 C L J 141, 26 Mad 212 16 W R 227 28 Bom 244 at page 247 29 Mad 124 (See notes under section 16)

(5) Set-off claimed by a defendant for amount beyond the jurisdiction of the S C Court can be allowed by such Court—12 Bom 31

33 A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

NOTES

The same Court exercising both jurisdictions as two distinct courts—I L R 24 Bom. 310 24 Mad 25 525 at page 535

34 Notwithstanding anything in the last two

Modification of
Code as so applied foregoing sections,—

(a) when, in exercise of the jurisdiction of a Court of Small Causes a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court Small Causes,—

the documents mentioned in section 224 of the Code of Civil Procedure (Act XIV of 1882) [Order 21 Rule 6 of Act V of 1908] shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent

NOTES

(1) The section provides for the procedure of transferring of decree for execution from one branch of the same Court to its another branch

(2) A decree from one branch may be transferred to another branch as to another Court I L R 17 Mad 309

35 (1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree which if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding

Continuance of
proceedings to
abolish Courts

has arisen were about to be instituted, would have jurisdiction to try the suit

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure as extended to Courts of Small Causes, or in any other enactment for the time being in force

NOTES

(1) When a Munsif with S C C Powers is succeeded by another without such power—the Court for the time being ceases to be a S C Court but the new officer can try S C C cases like ordinary suits—I L R 31 Cal 1057 Read 44 All 59

(2) In similar contingencies District Judge may transfer S C cases to another Court with S C C powers or to the ordinary jurisdiction of the same Court—For details see 31 Cal 1057

36 *This section has been repealed by the Indian Limitation Act IX of 1908 vide schedule III of the Limitation Act IX, of 1908*

37 All orders required by this Act to be made in
 Publication of writing by the Local Government
 certain orders shall be published in the official
 Gazette

THE FIRST SCHEDULE

*[Repealed by the Repealing and Amending Act, 1891,
 (XII of 1891)]*

THE SECOND SCHEDULE

**Suits excepted from the cognizance of a
 Court of Small Causes.**

(See section 15)

(1) A suit concerning an act or order purporting to be done or made by the Governor-General in

Council or Local Government or by the Governor-General or a Governor or by a Member of the Council, of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or a Local Government

NOTES

(See notes on section 15)

(1) This clause does not include suit for recovery of taxes illegally realised—I L R 13 Mad 78

(2) A suit for damages for wrongful acts done by a Government servant within his authority may lie against Government—I L R 27 Bom 189

(2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office

NOTES

(1) (See notes on section 15)

(2) A judicial officer cannot be sued for acts done by him in good faith in his official capacity—I L R 30 Bom 241 See also 1 C L J 355

(3) See note (2) to Clause (1)

(4) Suit for damages against a decree holder for wrongful acts done under cover of execution proceedings can be tried by S C Court—6 C L J 59

(3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, by an officer of a Court of Wards in the execution of his office,

NOTES

(1) This clause does not apply to suits for damages done by State Railways—I L R 17 Cal 290

(2) A suit for damages for loss of articles sent by *Value Payable Post* may lie in an S C C Court—I L R 28 Mad 213.

(3) President of a District Board is not an officer of Govt 46 Mad 808

N B—A damage suit lies in S C Court against the Secretary of State for loss of goods carried by Railway—17 Cal 290 97 P R 1894 No damage suit lies against Govt servants in S C Court for illegal acts 21 Bom 754

(4) a suit for the possession of immovable property or for the recovery of an interest in such property,

NOTES

(1) *See notes on section 15*

(2) Standing trees are immovable properties—I L R 5 All 564 but fruits on trees are movable properties—I L R 3 All 168

(3) A suit for share of *price of tree cut by a tenant* (where the landlord is entitled to get it by custom) does not come within this clause such a suit is cognizable by an S C Court—I L R 4 All 19

(4) A suit for *malikāna* cannot be tried by an S C Court—I L R 5 Cal 921

(5) *In a suit for damages etc an S. C. Court can incidentally enquire into questions of title*—See 16 C W N 228; 37 Bom. 675 F B

(6) Suit for the recovery of certain sum presenting a share in the produce of immovable property is cognisable by S C Court I L R 34 Bom. 171 (question that consent of parties can not give jurisdiction to a Court discussed in this case)

(7) Suit for damages for use and occupation of land is triable in S C Court—16 C W. N 89

(8) Suit for mesne profits is triable in S C Court—23 Cal 884 F B.

(5) a suit for partition of immovable property

NOTES

(1) Standing crops are immovable property—I L R 14 All 30 see I L R 21 Cal 430 but under the new C. P Code (Act V of 1908) movable property includes growing crops vide sec 2 (13)

(2) But standing timber growing crop and grass are immovable properties under section 3 of the T P Act Vide 9 I C 133

(6) a suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immovable property for the redemption of the mortgage ,

NOTES

(1) An S C Court can entertain a suit on a mortgage bond if no lien is claimed against immovable property mortgaged For principle—See 15 W R. 265.

(2) A suit for recovery of interest due on a mortgage bond without seeking to enforce the mortgage lien can be instituted in an S C Court—12 W R 367

(3) A suit to enforce mortgage of fruits of trees is triable in S C Court 11 M L J 343

(7) a suit for the assessment enhancement, abatement or apportionment of the rent of immovable property ,

NOTES

(1) A suit for damages for use and occupation of land [provided it does not amount to criminal trespass or mischief]—vide clause 35 (ii) lies in an S. C Court—I L R. 24 Cal 557

(2) A suit for excess rent realised may be tried by S C Court—I. L. R. 26 Cal 842 *

(3) A suit for damages for use and occupation of land against a tenant who holds over after the term of the lease is triable in S C Court—22 Mad 149

(8) a suit for the recovery of rent, other than house rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto,

NOTES

Cases triable by S. C. Court

(1) See note to sec 15 also I L R 27 Cal 837 F B For definition of *rent*—see 19 C W N 415

(2) A suit on a *bond executed for arrears of rent* is cognizable by S C Court—1 C L J 14 (n)

(3) Suit for *barga paddy payable by a labourer* for cultivation of land—14 C W N 629

(4) Suit for rent by a grantor of *forest right*—19 C W N 415

(5) A suit for rent of *Bastu* land is triable by specially authorised S C Court but not *ordinarily*—See I L R 35 Cal 677

(a) *Jodi* is rent, 24 Mad 511 (notes) and *Kattubadi* is also rent 21 Mad 116 F B

(b) Suit for house rent is triable by S C Court—23 Cal 835, 19 I C 858

Note—*Alipur* and *Sealdah*—“All munsifs of Alipur and Sealdah are empowered to try under Small Cause Court procedure suits for rent of homestead land up to Rs 50 in value”—vide

* A S C Court can go behind commutation proceedings of Settlement officer and order recovery of damages if Settlement Officer's order was not according to law. 23 C W N 614

Bengal Government Notification No 1778 J D dated the 29th of June 1904—and 7 C L J 407 and 18 C W N notes 232

Cases not triable by S C Court

(1) Suit for *produce rent* against a tenant—1 C W N, 55 16 C W N 89—but suit for price of *Barga produce* from a labourer who cultivated the land (*i.e.* who is not a tenant) can be tried by S C Court—14 C W N 629

(2) Suit for *assessment of rent*—23 W R 426.

(3) A suit for recovery of *rent assigned* to plaintiff—4 C W N 10

(4) A suit for recovery of *rent wrongfully realised* by defendant from plaintiff's tenant—I L R 17 Cal 541

(9) a suit concerning the liability of land to be assessed to land revenue,

NOTES

For such suits see the Bengal Tenancy Act Chapter X on Settlement and sections 104 (H) and 111 (A)

(10) a suit to restrain waste,

NOTES

Such a suit is in fact a suit for injunction—see clause (17) and notes thereunder

(11) a suit for the determination or enforcement of any other right to or interest in immovable property,

NOTES

This clause does not include the following cases:—

(a) Suit for *damage for use and occupation* of land—I L R. 24 Cal. 557 when plaintiff is out of possession such a suit is not maintainable 18 Cal. 31

(b) Suit for *recovery of purchase money* where J D had no saleable interest in immovable property sold—1 C W N 140; but no suit lies if J D had some interest in land—23 Cal. 235

(c) Private purchaser's suit on the ground that J D had no saleable interest—4 C W N 63

(d) Damages for trees cut by tenant—I L R 26 Mad 176 but not against a trespasser vide notes to new clause 35 (ii)

(e) Suit for *mesne profits* of immovable property—I L R 23 Cal 884 F B For suits for mesne profits realisable under the terms of a *kobala*—See 12 C W N 599

(f) Suit for *trespass* to immovable property—I L R 17 Cal 707 but such suits are not now cognisable by S C Court after the amendment of 1913 [vide new clause 35 (ii)]

(g) Suit for damages for trees cut from plaintiff's land—if defendant denies plaintiff's title to the land—could be formerly tried by S C Court 37 Bom 675 F B But now such suits are not triable by S C Court [vide new clause 35 (ii)]

(h) Suit for damages for trees cut and appropriated by a tenant from his holding—5 C L J 413 followed in 13 C W N 1025—11 C L J 98 For similar suits where trees are cut in contravention of a contract to the contrary between landlord and tenant—See 26 Mad 176 followed 36 Cal 130

(i) Suit by a tenant against the landlord for damages for illegal realisation by the latter of a portion of the price of trees cut by the former—4 All 19

(12) a suit for the possession of an hereditary office or of an interest in such an office including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office,

NOTES

See I L R 2 Mad 146 and I L R 3 All 37

(13) a suit to enforce payment of the allowance or fees respectively called *malikana* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institutions,

(1) Money paid as Road Cess can be recovered by suit in S C Court—I L R 9 Cal 183

(2) Suit for offerings at temples cannot be tried by an S C Court—I L R 28 Mad 202

(3) Suit for damages by a *shebast* for unlawful taking away of goats sacrificed at the altar of a goddess—even if *shedast's* title is disputed which may be incidentally decided can be tried by S C Court—15 C W N 666

(4) Land cess—suit by a Zamindar against *namdar* for recovery of *land cesses* is not cognizable by S C Court I L R 36 Mad 18

(14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act the whole or any part of the compensation,

NOTES

Such suit cannot be instituted in S C Court as conflicting titles to acquired property may have to be determined—I L R 20 Mad 155

(15) a suit for the specific performance or rescission of a contract ,

NOTES

(1) S C Court can entertain a suit for recovery of money due under an award—I L R 13 Mad 344

(2) A suit for *Pains* rent payable by defendant before *Patni* sale but which plaintiff had to pay is triable by S C Court—I L R 15 Cal 652

(3) For damages for cutting trees in contravention of contracts see 36 Cal 130 and notes to clause (12)

(16) a suit for the rectification or cancellation of an instrument ,

NOTES

Such suits are in the nature of Title Suits and not triable by an S C Court

(17) a suit to obtain an injunction ,

NOTES.

Suit for injunction—e.g. suit by unsuccessful claimant to stay sale—(I L R 12 Cal 515) suit for preventing a defendant from digging well likely to cause damage to plaintiff's building (I L R 24 Cal 260) suit for removing obstructions to light and air (9 C W N 543) suit for restraining defendant from collecting rent from plaintiff's tenants (I L R 29 Cal 500) and like suits are considered as Title Suits and are excepted from the cognizance of S C Courts

(18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co trustee to enforce against the estate of a deceased trustee a claim for contribution ,

NOTES

(1) A suit for movable property distributable under an endowment cannot be tried by S C Court—I L R 14 All 413

(2) A suit by manager of an endowed property for damages against his predecessor in office cannot be entertained in S C Court—I L R 21 Mad 245—A trustee advancing money of trust property to another trustee may recover the amount by a suit in S C Court—I L R. 26 Mad 200

(3) A suit for recovery of salary due under a trust deed is not triable by S C Court—I L R 26 Mad 368

(19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332 of the Code of Civil Procedure (Act XIV of 1882)

NOTES

(1) Sections 283 and 332 of the old C P Code correspond with Order 21 Rule 63 and Order 21, Rules 100 101 and 103 of the C P Code of 1908

(2) In considering the nature of the suit the Court should look to substantive relief prayed for mere asking for

which should not be declared in such a case would not change the nature of the suit, (I L R 8 Cal. 399 and 28 All 293) because the S C Court has in fact to declare title to movable properties or money for decreeing suits triable by such Courts

(3) An S C Court can incidentally declare validity or otherwise of a document in a suit for recovery of money—17 W R. 88

(20) a suit instituted under section 283 or section 332 of the Code of Civil Procedure

NOTES

(1) Vide note (2) to last clause.

(2) Such suits are mixed suits for declaration and injunction and are consequently not triable by S C Court So an unsuccessful claimant cannot bring a suit in respect of movable property attached or for its price in S C Court—3 A W N 115 I L R 7 Cal. 608

(3) But one can sue in S C Court for damages for his immovable property sold in execution—I L R 7 Cal 608

(4) An unsuccessful claimant can sue for price of his movable property attached—I L R 23 Bom 266

(21) a suit to set aside an attachment by Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue authority or by a guardian ,

(1) Suit to set aside sale either in whole or in part cannot be tried by S C Court—I L R 28 Cal 235

See notes on section 15

(2) A suit by A. P to get refund of purchase money when J D had no interest in any part of the property sold is triable by S C Court 1 C W. N 140 but if J D had interest in a part of the property sold S C Court cannot try the suit—see case in (1)

(2) a suit for property which the plaintiff has conveyed while insane ,

NOTES

(1) This applies to cases of movable property as well as immovable property

(2) Under the General Clauses Act—Immovable property includes land, benefits to arise out of land and things attached to the earth or permanently fastened to any thing attached to the earth sec 2 clause (25) and movable property means property of every description except immovable property [sec 3 clause (34)]

(23) a suit to alter or set aside a decree decision or order of a Court or of a person acting in a judicial capacity ,

NOTES

(1) See note 2 on clause (21)

(2) S C Court cannot even try a suit for setting aside its own decree—10 W R 35^a but such a Court can set aside its decree by review See note on section 17

(24) a suit to contest an award

NOTES

(1) Money due under an award can be realised by suit in S C Court I L R 13 Mad 344

(2) Award on matter triable by S C Court can be filed in S C Court 10 W R 85

(3) A private award can be filed within 6 months from the date of the award under the Limitation Act

(4) S C Court can refer a case to arbitration vide Sch II of C P Code

(25) a suit upon a foreign judgment as defined in the Code of Civil Procedure or upon a judgment obtained in British India ,

NOTES

For definition of Foreign Court see C P Code sec 2

(26) a suit to compel a refund of assets improperly distributed under section 295 of the Code of Civil Procedure (Act XIV of 1882)

NOTES

(1) Section 295 of the old C P Code corresponds with section 73 of the C P Code of 1908

(2) For suit to refund money in execution case See I L R. 9 Mad 250

(27) a suit under the Indian Succession Act 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets, *

X of 1865
X of 1881

NOTES

See section 139 of Act V of 1881

(28) a suit or legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate,

NOTES

(1) S C Court cannot try suit for share in property left by a deceased 17 W R 46

(2) But it can try such a suit if plaintiff's share had been determined by another suit 7 C L R. 71

(3) Where share is not sought to be established but entire movable property is claimed S C Court can try such a suit I L R 27 All 622

(4) This article does not apply to suits by heirs against wrong doers—19 C W N 611—even if plaintiff's title is denied—11 W R 93 (referred to in 19 C W N 614)

* These Acts have been repealed and incorporated in the Indian Succession Act (Act XXIX of 1925)

(29) a suit—

(a) for a dissolution of partnership or for the winding up of the business of a partnership after its dissolution ,

(b) for an account of partnership transactions ,
or

(c) for a balance of partnership account, unless the balance has been struck by the parties or their agents

NOTES

(1) Debt due to a retired partner can be recovered by a suit in S C Court—I L R 19 All 513

(2) Where there was an adjustment of account between partners—money due to a partner on such adjustment may be recovered by a suit in S C Court—I L R 21 Mad 366

(3) A suit in which partnership account has to be adjusted cannot be tried by S C Court—I L R 6 Cal 551

(30) a suit for an account of property and for its due administration under decree ,

NOTES

(1) See I L R 28 Mad 394

(2) S C Court cannot order adjustment of accounts I L R 23 Cal 884 but a S C Court can entertain a suit for recovery of money admitted to be due by defendant after adjustment of account—I L R 21 Mad 366

(3) But S C Court cannot entertain a suit for mesne profits where account has to be taken see I L R 18 Cal 316 but where account is not to be taken S C Court can try such suit—see note on section 15 and I L R 23 Cal 884

(31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received

the mortgagee, and a suit for the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant

NOTES

(1) A suit to recover *mense profits* is cognizable by a Court of Small Causes—I. L. R. 23 Cal. 884 F. B. at page 890 but see *contra*—I. L. R. 25 Bom. 85 and I. L. R. 25 Mad. 103 F. B. Read I. L. R. 35 Cal. 691 and 23 All. 437.

(2) See note on section 15 regarding damages for trees cut and taken by tenant See 26 Mad. 176 [See note to clause 35 (u)]

(32) a suit for a general average loss or for salvage

NOTES

See 9 W. R. 252—In this case property had been abandoned.

(33) a suit for compensation in respect of collision between ships ;

NOTES

Such suits are ordinarily triable by Courts having Admiralty Jurisdiction and by Civil Courts

(34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy ;

NOTES

Suit for money due under Life Insurance or Endowment Policies are not triable by S. C.

(35) a suit for compensation—

(a) for loss occasioned by the death of a person caused by actionable wrong ;

(b) for wrongful arrest, restraint or confinement ;

(c) for malicious prosecution ;

(d) for libel ,

(e) for slander ,

(f) for adultery or seduction ,

(g) for breach of contract of betrothal or promise of marriage ,

(h) for inducing a person to break a contract made with the plaintiff ,

(i) for obstruction of an easement or division of a water-course ,

(u) *for an act which is, or, save for the provisions of Chapter IV of the Indian Penal Code, would be an offence punishable under Chapter XVII of the said Code (Act XLV of 1860)*

(j) *for illegal, improper or excessive distress, attachment or search, or for trespass committed in or damage caused by, the illegal or improper execution of any distress, search or legal process*

(k) for improper arrest under Chapter XXXIV of XIV of 1882 the Code of Civil Procedure* (of 1882) or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code, or

(l) for injury to the person in any case not specified in the foregoing sub clauses of this clause

NOTES

(1) Sub clause (c)

A suit to recover costs of criminal prosecution is a suit for damages for malicious prosecution and consequently cannot be tried by S C Court—I L R 14 Bom 100; but see also—L L R 10 All 49

* See the new C P Code of 1908

(2) *Sub-clause (d).*

Suit for damages for slander without special damage is not maintainable—I. L. R. 6 Cal. 653.

(3) *Sub-clause (g).*

(1) Suit for damages for breach of marriage contract is not triable by S. C. Court—I. L. R. 15 Cal. 823 (2) See I. L. R. 2 Cal. 47

A suit to recover damages for injury to wall caused by the diversion of a water course is triable by an S. C. Court,—I. L. R. 20 Bom. 283, but a suit for damages for obstruction of water course cannot be tried by a S. C. Court—I. L. R. 18 Mad. 28

(5) *Sub-clause (i)*

Offences mentioned in Chapter XVII of the Indian Penal Code are as follows —

(1) Theft (*section 378 to 382*)

(2) Extortion (*section 383 to 389*)

(3) Robbery and Dacoity (*sections 390 to 404*).

(4) Criminal breach of trust (*sections 403 to 409*).

(5) Receiving stolen property (*sections 410 to 414*)

(6) Cheating (*sections 415 to 420*).

(7) Fraudulent deeds and dispositions of property (*sections 421 to 424*)

(8) Mischief (*sections 425 to 430*).

(9) Criminal trespass (*sections 441 to 442*).

Formerly there was no bar to a S. C. Court trying suits which involved offences mentioned above. An S. C. Court could try suits for mischief and award damages—In I. L. R. 17 Cal. 707, it was held that an S. C. Court could try suits for damages for paddy taken (theft) by defendant. In I. L. R. 37 Bom. 675 (F. R.) their Lordships held that suit for damages for trees cut from plaintiff's land—even if defendant denied plaintiff's title could be tried in S. C. Court. But as these are cases involving offences of trespass, (theft) or mischief and as acts of defendant constitute offences punishable under Chapter XVII of the Indian Penal

Code such suits are now not cognizable by an S C Court. The effect of the recent amendment of 1914 is to exclude a large number of cases which had hitherto been tried by Small Cause Courts from the jurisdiction of such Courts

IT IS THEREFORE CLEAR THAT THE FOLLOWING AMONG OTHER SUITS ARE NOW EXEMPTED BY THE NEW AMENDMENT — (*vide* 15 C L J 219 for reasons—a case of bribery)

(1) Suit for damages against defendant for cutting a tree from plaintiff's land with the intention of dishonestly taking the tree out of plaintiff's possession—without plaintiff's consent [*vide* illustration (a) to section 378, I P C]

(2) Suit for damages for criminal misappropriation by defendant of plaintiff's movable property entrusted to defendant's care [*vide* illustration (e) to section 398 I P C]

(3) Suit for damages against defendant for dishonestly removing plaintiff's movable property [*vide* illustration (f) of section 378 I P C read illustration (b) to section 382]

(4) Suit for refund of money taken by a person under circumstances which constitute extortion *e g*, money taken by Police under threat of sending up the plaintiff unless payment is made [*vide* section 383 and illustration (d) to section 390 I P C]

(5) Suit for refund of money taken by defendant from plaintiff by threatening to injure plaintiff unless payments be made [*vide* illustration (b) to section 390 I P C]

(6) For damages for misappropriation by defendant of joint movable property belonging to plaintiff and defendant, *e g*, for selling a horse or cow which is joint property of plaintiff and defendant by defendant and appropriating the whole proceeds to his own use [*vide* illustration (e) to section 403 I P C]

(7) Suit for damages for dishonest misappropriation of movable property by a servant (*vide* illustration to section 404)

(8) Suit for damages for dishonest misappropriation by defendant of moveable property entrusted for carrying [*vide* illustration (f) of section 495 I P C.]

(9) Suit for damages for not supplying articles after sample previously supplied [*vide* illustration (c) to section 415, I P C]

(10) Suit for refund of purchase money on the ground that defendant had previously sold his property and had no interest in the property at the time of executing conveyance in plaintiff's favour [*vide* illustration (a) to section 415 I P C]

(11) Suit for damages for wrongfully destroying joint property [*vide* illustration (g) to section 425 I P C] [See article 41]

(12) Suit for damages for intentionally damaging plaintiff's crops by allowing defendant's cattle to enter plaintiff's field [*vide* illustration (h) to section 425 I P C]

(13) Suit for damages for criminal trespass *e.g.* for forcibly entering into plaintiff's house for annoying or insulting the plaintiff (*vide* section 441 I P C)

RULINGS *

(1) Suit for money misappropriated is not triable by S C Court 25 C W N 256

(2) A suit against a tenant for damages for cutting trees from his holding is triable in S C C file 23 C W N 135 notes

(Read the article on the Subject—23 C W N 207 (notes))

(3) Damage suit between co-sharers—appropriation of joint property in ouster of plaintiff a co-sharer is triable in S C Court 23 C W N 900 Read 19 C W N 872 Read 27 C W N 469

(4) Suit for damages for trees cut and appropriated by a stranger involves criminal offence and therefore such suit is not triable in S C C file 21 C W N 1109 27 C L J 293, 41 I C 936 41 I C 494 (Cal)

(5) Suit for damages for use and occupation of land is triable in S C C file 16 C W N 89, 22 Mad 149

(6) *Sub clause (j)*

(i) This applies to suits for damages (torts) for illegal or excessive distress—I L R 24 Cal 163 33 All 306 1 I C 383; but S C Court can award compensation for wrongful attachment before judgment—I L R, 26 Mad 501

* See Part IV Chapter IV for further details

(ii) A judgment debtor may however recover any excess money realised by D H. by a suit in S C Court—I L R 1 All 388

(iii) A suit to get refund of money paid to satisfy a wrongful distress warrant is triable by S. C Court—I L R 24 Cal 163,

(7) *Sub clause (i)*

(i) Suit for damages for abusive language and the like is not cognizable by S C Court—I L R 36 Bom 443

(ii) Suit for personal injury is not triable by S C Court—I L R 5 Cal 925

(36) A suit by a Muhammadan for exigible *mu'ny-jal* or deferred (*mu'wajjal*) dower

NOTES

Formerly S C Courts could try such suits but as contracts relating to contract of marriage have to be gone into in such cases they have been excluded

(37) A suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor or for a divorce

NOTES

These suits are in the nature of Title Suits & are consequently excepted by this clause

(38) A suit relating to maintenance.

NOTES

(1) A suit even for arrears of maintenance cannot be brought in an S C Court—I L R 15 Cal 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

(2) A suit for maintenance in lieu of arrears of maintenance to defendant does not lie in S C Court. See 111.

(3) For the view of the Bombay High Court in such cases (for arrears where amount is fixed) see I L R 22

(39) A suit for arrears of land revenue, village expenses or other sums payable to the representative of a village community or to his heir or other successor in title ,

NOTES

Cases under this clause are very rare

(40) A suit for profits payable by the representative of village-community or by his heir or other successor in title after payment of land revenue, village expenses and other sums

NOTES

Such suits belong in reality suits for enforcing right in landed property have been excluded

(41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property, or a member of an undivided family in respect of a payment made by him on account of the property or family .

NOTES

(1) A suit for contribution is not cognizable by a Court of Small Causes—I L R 23 Cal 189 (2) but a suit to recover costs paid by one of two defendants who are jointly liable can be tried by S C Court—L L R 15 Cal 713 (3) a suit by a plaintiff to recover his share of costs for repairing a joint property can be tried by S C Court—I L R 15 Mad 153 Read I L R 11 Cal 169

(2) Suits referred to in clause (41) are excepted as in these suits very often questions about share to landed property are involved but formerly contribution suits based on contract were not excluded, I L R 6 Cal 395 Some suits in the nature of a contribution suit e.g a suit for recovery of entire sum

paid by the Plaintiff which was payable by the Defendant is triable in S C Court—For Principle read 40 All 135

(3) See Part IV Chapter IV for further discussions

(42) a suit by one of several joint mortgagors of immovable property for contribution in respect of money paid by him for the redemption of the mortgaged property

NOTES

Suits for cost paid which was payable jointly by the plaintiff and the defendant are not excepted See note on section 15 and read I L R 15 Cal 713 *contra* I L R 23 Cal 189

(43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land revenue ,

NOTES

See cases referred in section 15

(43A) a suit to recover property obtained by an act which is, or save for the provisions of Chapter IV of the Indian Penal Code, would be an offence punishable under Chapter XVII of the said Code (Act XLV of 1860) ,

NOTES

This has been added by Act VI of 1914

(44) a suit, the cognizance whereof by a Court of Small Causes, is barred by any enactment for the time being in force ,

NOTES.

See Indian Companies Act the Copyright Act

IMPORTANT MISCELLANEOUS CASES.

(1) If a suit triable by S C Court is tried by mistake as a regular suit no appeal lies from the judgment —I L R 40 Cal 537

(2) *Suit for damages for trees cut*—where defendant has a share in the trees—is triable in S C Court Such a case does not come under Article 35 (ii) of the second Sch 27 C W N 469

(3) *Suit on a chit for specific sum* is triable in S C Court though the *chit* was for a transaction involving criminal offence mentioned in Art 35 (ii) of the second Sch 27 C W N 549,

(4) A Small Cause Court could formerly attach immovable property before judgment—28 C W N 16 But this is no longer the law after the passing of Act I of 1926

(5) Jurisdiction of Small Causes Court is not ousted because the Court has incidentally to examine accounts for decision of a case—21 C W N 784=27 C L J, 96

(6) If assessment of municipal tax was *ultra vires* S C Court can go into that question for determining an issue (*e.g.* for refund of tax realised) before it—27 C L J 379

(7) If a S C Court returns a plaint for presentation to proper Court the latter Court must accept the plaint It can refer the question to High Court if it thinks fit to do so—21 C W N 784

(8) In a *barga* suit against a labourer, a Small Cause Court can declare that an order of a Revenue Officer commuting rent under section 40 B T Act was without jurisdiction—23 C W N 614

(9) Judgment of S C Court should contain short reasons for decision 59 I C 936

N. B. For other important notes

See Part IV Chapter IV.

PART X.

APPENDICES.

APPENDIX (A).

CHAPTER I.

The Indian Court Fees Act shewing the amendments made regarding important portions in (1) Assam (2) Bengal (3) Behar and Orissa (4) Bombay (5) Central Provinces (6) Madras (7) the Punjab and (8) the United Provinces,
WITH SHORT NOTES.

CHAPTER II.

The Suits Valuation Act (with notes)

CHAPTER III.

ALL-INDIA PROCESS FEES.

Process Fees as prescribed—

Under rules framed by the High Courts of
(1) Bengal (2) Behar & Orissa (3) Allahabad
(U P) (4) Madras (5) Bombay and (6) C. P.

CHAPTER IV.

Rules relating to expenses of witnesses and scales of expenses in the different Provinces.

PART X.

The Civil Court Practice.

APPENDIX (A)

COURT FEES.

*Important portions of the C F Act with amendments
made in the different Provinces and notes*

CHAPTER I.

Fees payable in Civil Courts and in Public Offices

*Fees payable on documents filed, etc., in Mofussil
Courts or in Public Offices*

Except in the Courts mentioned in the Court Fees Act, no document of any of the kinds specified as chargeable in the first or second schedule to that Act shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document [see section 7 of C F. Act]

Valuation of suits for purposes of court fees.

Computation of fees payable in certain suits for money

The amount of fee payable under the C F Act in the suits* next hereinafter mentioned shall be computed as follows —

*As to the valuation of suits for the purpose of determining the jurisdiction of Courts see the Suits Valuation Act 1887 (VII of 1887)

i In suits for money (including suits for damages or compensation, or arrears, of maintenance or annuities, or of other sums payable periodically)—according to the amount claimed

Suits for Maintenance, Etc.

ii In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year

Suits for Movables, Joint Property, Declarations, Injunction, Accounts and Easement.

iii In suits for movable property other than money, where the subject-matter has a market value—according to such value at the date of presenting the plaint

iv In suits—

(a) for movable property where the subject-matter has no market value, as for instance—
case of documents relating to title,

(b) to enforce the right to share in any property on the ground that it is joint family property,

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

(d) to obtain an injunction,

(e) for a right to some benefit (not otherwise provided for) to arise out of land,

(f) for accounts,

According to the amount at which the relief sought is valued in the plaint or memorandum of appeal

In all such suits the plaintiff shall state the amount at which he values the relief sought * *

Suits for lands, houses and gardens.

v In suits for the possession of land, houses and gardens—according to the value of the subject matter and such value shall be deemed to be—

where the subject matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government ,

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—
ten times the revenue so payable

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid ,

and such revenue is settled, but not permanently—

five times the revenue so payable

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—
fifteen times such nett profit

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood

(d) where the land forms part of an estate-paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned—*the market-value of the land* * * *

Explanation—The word "estate," as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue

(e) Where the subject-matter is a house or garden—*according to the market value of the house or garden*

Suit to enforce a right of pre-emption.

v₁ In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v of this section) of the land house or garden in respect of which the right is claimed

Suit for interest of assignee of land-revenue.

v₁₁ In suits for the interest of an assignee of land revenue—fifteen times his net profits as such for the year next before the date of presenting the plaint

Suit to set aside an attachment

v₁₁₁ In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall

be computed as if the suit were for the possession of such land or interest

Suit to foreclose and Suit to redeem.

ix. In suits against a mortgagee for the recovery of the property mortgaged,

and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute—according to the principal money expressed to be secured by the instrument of mortgage.

Suit for specific performance.

x. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration

(b) of a contract of mortgage—according to the amount agreed to be secured

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term

(d) of an award—according to the amount or value of the property in dispute.

Suit between landlord and tenant.

In the following suits between landlord and tenant —

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(cc) for the recovery of immovable property from a tenant including a tenant holding over after the determination of tenancy,

(d) to contest a notice of ejectment

(e) to recover the occupancy [of immovable property] from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the [immovable property] to which the suits refer, payable for the year next before the date of presenting the plaint

Appeal.

Fee on memorandum of appeal against order relating to compensation

The amount of fee payable under the Act under section 8 on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant

Mesne Profits

Procedure in suits for mesne profits or accounts when amount decreed exceeds amount claimed.

In suits for mesne profits or for immovable property and mesne profits or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the

fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer [See section 11 of the Court Fees Act]

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree if the profits so ascertained exceed the profits claimed the further execution of the decree shall be stayed until the difference between the the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid If the additional fee is not paid within such time as the Court shall fix the suit shall be dismissed

Important rulings under the Court Fees Act

(1) Jurisdiction of Court and valuation for Court Fees

Jurisdiction of a Court is ascertained with reference to the value of the subject matter and cannot depend on the valuation for purposes of court fees
Vide 25 W R 39

For determining valuation for purposes of court fees market value of the property is to be taken—
Vide 12 B L R 113 and I L R 1 Bom 543 Vide
I L R 17 Cal 680 see also 11 C W N 705

(2) Mortgage Suits

(a) Interest claimed is included in valuation
Vide I L R 18 Bom 696

(3) Interest after suit

(b) This is not included in valuation in cases of appeals Vide I L R 15 Bom 416

(4) Suits for Mesne Profits.

At first court fees have to be paid on the amount claimed at the outset—see section 11 of the C F. Act

(5) Suits for tilte-deeds.

Court fees to be paid according to the relief claimed and not according to the value of the property covered by the deed—Vide I L R 4 Cal 322.

(6) Partition Suits

By a person in possession -Rs 15 as court fees is required Vide I L R 8 Cal 757, but where the plaintiff is not in possession *ad valorem fees* have to be paid Vide I L R 18 Bom 209 (See 13 I C 185 and 16 I C 771)

(7) Declaratory Suits

(a) If *injunction* is prayed—it amounts to consequential relief Vide I L R 26 Cal 854 7 C L J 36 P C

(b) When consequential relief is claimed—*ad valorem fees* to be paid Vide I L R 28 Cal 567

(8) Suit to set aside adoption and to declare it invalid

(c) If possession of immovable property is aimed at in such a suit, *ad valorem fees* on the value of the property has to be paid Vide 22 W R 338

(9) Suit after claim is disallowed

(d) Where claim is disallowed and the unsuccessful party brings a suit for declaration of his title and asks for an injunction to restrain sale in execution, these prayers amount to consequential relief and *ad valorem fees* have to be paid—Vide I L R 31 Cal 511 See also 15 Cal 104 and 22 W R 422.

(10) Suit after Revenue sales.

(e) *To declare a revenue sale invalid and for possession—ad valorem fees to be paid* Vide 6 C. W. N. 157.

(11) Suit for declaration that plaintiff is heir of some person.

(f) *In such a suit, if possession is claimed, ad valorem fees to be paid* Vide 16 W. R. 259.

(12) Suit to impugn a decree.

(g) *Where a plaintiff seeks to impugn a decree and to set aside an attachment in execution of such decree,—in such a case if the decretal sum exceeds the value of the property then the latter is the value of the suit if the decretal debt does not exceed valuation of the property then court-fees have to be paid on the decretal amount.* Vide 7 C. L. J. 36 P C

(13) Suits for setting aside documents.

(a) *To set aside a will or any other deed*

*In such suits where there are other substantial prayers, ad valorem fees have to be paid—*Vide 22 W. R. 438=15 B L. R. 172

(b) *To cancel an agreement to sell with a prayer for any other relief which the Court considers to be reasonable—ad valorem fees to be paid.* Vide I L R. 15 Mad. 294

(14) Valuation of suit and relief.**(Declaratory suit.)**

(a) *Where plaintiff is in possession but prays for declaration of title and injunction—the Court must accept the valuation as given by the plaintiff* V I L R. 17 Bom. 207.

(b) It has been held that under certain circumstances the Court can look into the valuation given by the plaintiff. (9 C. W. N. 690=I. L. R. 32 Cal. 734). In this case which was for setting aside a mortgage decree for Rs. 10,000 on the ground of fraud with a prayer for injunction restraining execution—the Court ordered the plaintiff to pay *advalorem fees*.

Note.—See No. 24.

(15) Account Suit.*

(a) *Advalorem fees* have to be paid on the valuation given at the outset—Vide I. L. 9 Bom. 22; 16 W. R. 156. I. L. R. 13 Bom. 517.

(b) Plaintiff may subsequently pay deficit Court fees *i. e.* after the amount due to him is ascertained; Vide I. L. R. 31 Cal. 365.

(16) Suit regarding share of a revenue paying estate.

The court fees have to be paid under cl. (a) of section 7, sub-sec. V of the Court Fees Act on 10 times the proportionate revenue payable—Vide 12 C. W. N. 990.

(17), Pre-emption suit.

In this class of suits the subject matter is the right of pre-emption, the value of which and not that of the property itself determines the jurisdiction of a Court. Vide I. L. R. 13 Cal. 255.

(18) Redemption suit, Jurisdiction and Court fees.

(a) For jurisdiction the amount due on the mortgage is the value. Vide I. L. R. 11 Bom. 591.

* For valuation for purposes of court-fee in suit for administration or accounts. See 45 Cal. 639.

(b) For Court fees the money secured by the deed, see sec. 7 of the C F Act

A B — Appeal Court fees have to be paid on the amount due from the mortgagor as found by the Court of first instance—Vide I L R 6 All. 488.

(19) Suit for possession of occupancy holding.

When brought against the landlord the suit is valued at one year's rental—Vide I L R. 32 Cal 268.

(20) Suit under section 106 of the B. T. Act.

Rupees ten worth (Now Rs 15) court-fees would be required—Vide 18 Indian Cases 275.

(21) Court-fees payable in suits transferred from Settlement Officer to Civil Court.

No court fees leviable 10 C W N. 917.

(22) Court fees on W S when set-off is claimed.

Ad valorem court fees to be paid on the amount claimed as set off 10 C W N 199 *Contra* 8 C W. N. 174 (See No 30)

(23) Court fees payable on suits upon instalment bonds.

To be paid on the amount claimed, and not on the whole amount covered by the bond; 4 W. R. (S. C. C) 12.

(24) Valuation of declaratory suits with consequential relief.

Where consequential relief is prayed *ad valorem* fee is to be paid.

(a) A prayer for injunction is a prayer for consequential relief 15 C. W. N. 705 I. L R. 32 Cal. 734

(b) A prayer for recovery of trust money in a suit for setting aside a trust deed amounts to a prayer for consequential relief I L R 10 Cal 380

(c) A suit for setting aside a summary order and for confirmation of possession is a suit with consequential relief 19 W R 18

(d) A suit for setting aside a forged will and for confirmation of possession—*advalorem fee* to be paid 22 W R 438 22 W R 340 (P C)

Note—See No 14

(25) Plaint for correction of the record of rights

Court fees are payable on the value of relief and not as in a declaratory suit 11 C L J 158

(26) Easement Suit

Court fees payable on the value of the relief—(Easement has been held to be immovable property) 12 C W N 969

(27) Suit for winding up a partnership business

This is in the nature of a suit for accounts and should be stamped accordingly 13 C L R 160 and I L R 6 Cal 321

(28) Suit for definite share of an estate

For this see 12 C W N 990

(30) Set off

Set off claimed in written statement in a rent suit not to be properly stamped—Vide 8 C W N 174 *Contra* 10 C W N 139

(31) Valuation in Probate cases—Sec 19B

Whether debts can be recovered or not full fees must be paid on the amount said to be due to the estate—Vide I L R 24 Cal 567

(d) When a property is subject to mortgage the amount of mortgage to be deducted from the value of the property—Vide 16 W R 253

(32) Valuation of property of a deceased by the Court at the instance of the Collector—Sec. 19 H.

The Court should hold an enquiry as to disputed valuation—Vide 6 C W N 898

(33) Plaints filed with insufficient stamp—Sec. 28.

Court to grant a time for filing deficit court-fees—Vide I L R 19 Cal 780

(34) Enlargement of time originally allowed for filing deficit court-fees.

The Court can enlarge the time Vide I L R 31 Cal 75

(35) Stamps should be purchased in the name of the party or his agent.

If stamps purchased by different persons and on different dates are filed—the filing pleader must explain the circumstances under which stamps were purchased before they can be punched by the officer of the Court—Vide 6 C W. N 785

(36) Refund of Court Fee Stamps

When any person is possessed of impressed Court-Fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or when any person is possessed of two or more (or in the case of denominations below Rs 5, four or more) court fee adhesive labels which have never been detached from each other, and for which he has no immediate use, the Collector shall, on application, repay to him the value of such stamps or labels in money. ' '

one anna in the rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that they were purchased by him with a *bona-fide* intention to use them that he has paid the full price thereof, and that they were so purchased or, in the case of impressed Court fee stamps so purchased, spoiled or rendered useless within the period of six months preceding the date on which they were so delivered

Schedule I

N. B. —(Local amendments have been shown under each head)

1. **Plaint** — 'written statement, pleading, a set off on counter claim' or memorandum of appeal (not otherwise provided for in this Act) or cross objection presented to any Civil or Revenue Court, except those mentioned in section 3 —

(a) When the amount or value of the subject matter in dispute does not exceed Rs 5—6 annas

(b) When such amount or value exceeds Rs 5/ for every Rs 5/- or part thereof, in excess of Rs 5/ up to Rs. 100/ —6 annas

(c) When such amount or value exceeds Rs 100/ for every Rs 10/- or part thereof, in excess of Rs 100/ up to Rs 1000/—12 annas

(d) When such amount or value exceeds Rs 1000/- for every Rs 100/- or part thereof, in excess of Rs 1000/- up to Rs 5000/—Rs 5/-

(e) When such amount or value exceeds Rs 5000/ for every Rs 250/- or part thereof, in excess of Rs 5000/- up to Rs 10,000/—Rs 10/-

(f) When such amount or value exceeds Rs 10 000 for every Rs 500/ or part thereof in excess of Rs 10 000/ up to Rs 20 000—Rs 15/

(g) When such amount or value exceeds Rs 20 000/ for every Rs 1000 or part thereof in excess of Rs 20 000/ up to Rs 30 000/ —Rs 20/-

(h) When such amount or value exceeds Rs 30 000 for every Rs 2000/ or part thereof in excess of 30 000 up to Rs 50 000—Rs 20/

(i) When such amount or value exceeds Rs 50 000 for every Rs 5000/ or part thereof in excess of Rs 50 000/—Rs 25/

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be Rs 3000/

Amendments in Bengal (Beng a Act II of 1922).

(j) When the amount or value of the subject matter in dispute does not exceed Rs 75/ for every Rs 5/ or part thereof of such amount in value—6 annas

(k) When such amount or value exceeds Rs 75/ for every Rs 5/ or part thereof in excess of Rs 75/ up to Rs 100/ —8 annas

(l) When such amount or value exceeds Rs 100/ for every Rs 10/ or part thereof in excess of Rs 100/ up to Rs 150/ —Re 1 2 as

(m) When such amount or value exceeds Rs 150/ for every Rs 10/ or part thereof up to Rs 1000/ —Re 1 2 annas

(n) When such amount or value exceeds Rs 1000/ for every Rs 100/ or part thereof in excess of Rs 1000/ up to Rs 7500/ —Rs 7 8 annas

(o) When such amount or value exceeds Rs. 7500/- for every Rs. 250/- or part thereof in excess of Rs. 7500/- up to Rs 10,000/—Rs. 15/-

(p) When such amount or value exceeds Rs 10,000/- for every Rs 500/- or part thereof in excess of Rs 10,000/- up to Rs 20,000/—Rs 22. 8 as

(q) When such amount or value exceeds Rs 20,000/- for every Rs 1000/- or part thereof, in excess of Rs. 20,000/- up to Rs 50,000/—Rs 30/-

(r) When such amount or value exceeds Rs 50,000/ for every Rs 5000/- or part thereof, in excess of Rs 50,000/ Rs 37 8 annas.

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be Rs 10,000/-

BENGAL.

Table of Rates of *id valorem* fees on plaint and memorandum of Appeal.

When the amount or value of the subject matter exceeds	But does not exceed	Proper fee			When the amount or value of the subject matter exceeds	But does not exceed	Proper fee		
Rs	Rs	Rs	As	P	Rs	Rs	Rs	As	P
0	5	0	6	0	240	250	28	2	0
5	10	0	12	0	250	260	29	4	0
10	15	1	2	0	260	270	30	6	0
15	20	1	8	0	270	280	31	8	0
20	25	1	14	0	280	290	32	10	0
25	30	2	4	0	290	300	33	12	0
30	35	2	10	0	300	310	34	14	0
35	40	3	0	0	310	320	36	0	0
40	45	3	6	0	320	330	37	2	0
45	50	3	12	0	330	340	38	4	0
50	55	4	2	0	340	350	39	6	0
55	60	4	8	0	350	360	40	8	0
60	65	4	14	0	360	370	41	10	0
65	70	5	4	0	370	380	42	12	0
70	75	5	10	0	380	390	43	14	0
75	80	6	2	0	390	400	45	0	0
80	85	6	10	0	400	410	46	2	0
85	90	7	2	0	410	420	47	4	0
90	95	7	10	0	420	430	48	6	0
95	100	8	2	0	430	440	49	8	0
100	110	9	12	0	440	450	50	10	0
110	120	10	6	0	450	460	51	12	0
120	130	13	0	0	460	470	52	14	0
130	140	14	10	0	470	480	54	0	0
140	150	16	4	0	480	490	55	2	0
150	160	18	0	0	490	500	56	4	0
160	170	19	2	0	500	510	57	6	0
170	180	20	4	0	510	520	58	8	0
180	190	21	6	0	520	530	59	10	0
190	200	22	8	0	530	540	60	12	0
200	210	23	10	0	540	550	61	14	0
210	220	24	12	0	550	560	63	0	0
220	230	25	14	0	560	570	64	2	0
230	240	27	0	0	570	580	66	4	0

BENGAL—Contd

Table of Rates of *ad valorem* fees on plaint and
Memo of appeal

When the amount or value of the subject matter exceeds	But does not exceed	Proper fee	When the amount or value of the subject matter exceeds	But does not exceed	Proper fee
Rs	Rs	Rs As P	Rs	Rs	Rs As P
580	590	66 6 0	940	950	106 14 0
590	600	67 8 0	950	960	108 0 0
600	610	68 10 0	960	970	109 2 0
610	620	69 12 0	970	980	110 4 0
620	630	70 14 0	980	990	111 6 0
630	640	72 0 0	990	1 000	112 8 0
640	650	73 2 0	1 000	1 100	120 0 0
650	660	74 4 0	1 100	1 200	127 8 0
660	670	75 6 0	1 200	1 300	135 0 0
670	680	76 8 0	1 300	1 400	142 8 0
680	690	77 10 0	1 400	1 500	150 0 0
690	700	78 12 0	1 500	1 600	157 8 0
700	710	79 14 0	1 600	1 700	165 0 0
710	720	81 0 0	1 700	1 800	172 8 0
720	730	82 2 0	1 800	1 900	180 0 0
730	740	83 4 0	1 900	2 000	187 8 0
740	750	84 6 0	2 000	2 100	195 0 0
750	760	85 8 0	2 100	2 200	202 8 0
760	770	86 10 0	2 200	2 300	210 0 0
770	780	87 12 0	2 300	2 400	217 8 0
780	790	88 14 0	2 400	2 500	225 0 0
790	800	90 0 0	2 500	2 600	232 8 0
800	810	91 2 0	2 600	2 700	240 0 0
810	820	92 4 0	2 700	2 800	247 8 0
820	830	93 6 0	2 800	2 900	255 0 0
830	840	94 8 0	2 900	3 000	262 8 0
840	850	95 10 0	3 000	3 100	270 0 0
850	860	96 12 0	3 100	3 200	277 8 0
860	870	97 14 0	3 200	3 300	285 0 0
870	880	99 0 0	3 300	3 400	292 8 0
880	890	100 2 0	3 400	3 500	300 0 0
890	900	101 4 0	3 500	3 600	307 8 0
900	910	102 6 0	3 600	3 700	315 0 0
910	920	103 8 0	3 700	3 800	322 8 0
920	930	104 10 0	3 800	3 900	330 0 0
930	940	105 12 0	3 900	4 000	337 8 0

When exceeding	But not exceeding	Fee	When exceeding	But not exceeding	Fee
Rs	Rs	Rs As P	Rs	Rs	Rs As P
4 000	4 100	345 0 0	5 800	5 900	480 0 0
4 100	4 200	352 8 0	5 900	6 000	487 8 0
4 200	4 300	360 0 0	6 000	6 100	495 0 0
4 300	4 400	367 8 0	6 100	6 200	502 8 0
4 400	4 500	375 0 0	6 200	6 300	510 0 0
4 500	4 600	382 8 0	6 300	6 400	517 8 0
4 600	4 700	390 0 0	6 400	6 500	525 0 0
4 700	4 800	397 8 0	6 500	6 600	532 8 0
4 800	4 900	405 0 0	6 600	6 700	540 0 0
4 900	5 000	412 8 0	6 700	6 800	547 8 0
5 000	5 100	420 0 0	6 800	6 900	555 0 0
5 100	5 200	427 8 0	6 900	7 000	562 8 0
5 200	5 300	435 0 0	7 000	7 100	570 0 0
5 300	5 400	442 8 0	7 100	7 200	577 8 0
5 400	5 500	450 0 0	7 200	7 300	585 0 0
5 500	5 600	457 8 0	7 300	7 400	592 8 0
5 600	5 700	465 0 0	7 400	7 500	600 0 0
5 700	5 800	472 8 0			

After this for every two hundred and fifty rupees add rupees fifteen—so on up to ten thousand rupees, then for every five hundred rupees—add rupees twenty two annas eight and so on up to twenty thousand rupees. Then for every one thousand of rupees—add rupees thirty and so on up to fifty thousand rupees, over fifty thousand rupees—add rupees thirty-seven eight annas for every five thousand rupees, but the fee in no case shall exceed ten thousand rupees.

Changes by Local Acts

ASSAM

Table of rates of *ad valorem*' fees leviable on plaints
and memo of appeal

When the amount or value of the subject matter exceeds			But does not exceed			Proper fees under Assam Act II of 1922 (Assam)		
Rs	As	P	Rs	As	P	Rs	As	P
5	0	0	5	0	0	0	6	0
10	0	0	10	0	0	0	12	0
15	0	0	15	0	0	1	2	0
20	0	0	20	0	0	1	8	0
25	0	0	25	0	0	1	14	0
30	0	0	30	0	0	2	4	0
35	0	0	35	0	0	2	10	0
40	0	0	40	0	0	3	0	0
45	0	0	45	0	0	3	6	0
50	0	0	50	0	0	3	12	0
55	0	0	55	0	0	4	2	0
60	0	0	60	0	0	4	8	0
65	0	0	65	0	0	4	14	0
70	0	0	70	0	0	5	4	0
75	0	0	75	0	0	5	10	0
80	0	0	80	0	0	6	2	0
85	0	0	85	0	0	6	6	0
90	0	0	90	0	0	6	12	0
95	0	0	95	0	0	7	2	0
100	0	0	100	0	0	7	8	0
110	0	0	110	0	0	12	6	0
120	0	0	120	0	0	13	8	0
130	0	0	130	0	0	14	10	0
140	0	0	140	0	0	15	12	0
150	0	0	150	0	0	16	14	0
160	0	0	160	0	0	18	0	0
170	0	0	170	0	0	19	2	0
180	0	0	180	0	0	20	4	0
190	0	0	190	0	0	21	6	0
200	0	0	200	0	0	22	8	0
210	0	0	210	0	0	23	10	0
220	0	0	220	0	0	24	12	0
230	0	0	230	0	0	25	14	0
240	0	0	240	0	0	27	0	0
			250	0	0	28	2	0

NB—For plaints of higher values see the Bengal Schedule as the rest of the
amendments in both the provinces are same ;

BOMBAY.

Table of rates of *ad valorem* fees leviable on plaints
and memo of appeal

When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee		When the amount or value of the subject matter exceeds	But does not exceed	Proper Fees	
Rs	Rs	Rs	As	Rs	Rs	Rs	As
	5		6	250	260	19	6
5	10		12	260	270	20	4
10	15	1	2	270	280	21	0
15	20	1	8	280	290	21	12
20	25	1	14	290	300	22	8
25	30	2	4	300	310	23	4
30	35	2	10	310	320	24	0
35	40	3	0	320	330	24	12
40	45	3	6	330	340	25	8
45	50	3	12	340	350	26	4
50	55	4	2	350	360	27	0
55	60	4	8	360	370	27	12
60	65	4	14	370	380	28	8
65	70	5	4	380	390	29	4
70	75	5	10	390	400	30	0
75	80	6	0	400	410	30	12
80	85	6	6	410	420	31	8
85	90	6	12	420	430	32	4
90	95	7	2	430	440	33	0
95	100	7	8	440	450	33	12
100	110	8	4	450	460	34	8
110	120	9	0	460	470	35	4
120	130	9	12	470	480	36	0
130	140	10	8	480	490	36	12
140	150	11	4	490	500	37	8
150	160	12	0	500	510	38	4
160	170	12	12	510	520	39	0
170	180	13	8	520	530	39	12
180	190	14	4	530	540	40	8
190	200	15	0	540	550	41	4
200	210	15	12	550	560	42	0
210	220	16	8	560	570	42	12
220	230	17	4	570	580	43	8
230	240	18	0	580	590	44	4
240	250	18	12	590	600	45	0

BOMBAY—Contd.

Table of rates '*ad valorem*' fees leviable on plaints
and memo of appeal.

When the amount or value of the subject matter exceeds.	But does not exceed	Proper Fee	When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee
Rs	Rs	Rs A	Rs.	Rs	Rs As.
600	610	45 12	950	960	72 0
610	620	46 8	960	970	72 12
620	630	47 4	970	980	73 8
630	640	48 0	980	990	74 4
640	650	48 12	990	1000	75 0
650	660	49 8	1000	1100	81 0
660	670	50 4	1100	1200	85 0
670	680	51 0	1200	1300	90 0
680	690	51 12	1300	1400	95 0
690	700	52 8	1400	1500	100 0
700	710	53 4	1500	1600	105 0
710	720	54 0	1600	1700	110 0
720	730	54 12	1700	1800	115 0
730	740	55 8	1800	1900	120 0
740	750	56 4	1900	2000	125 0
750	760	57 0	2000	2100	130 0
760	770	57 12	2100	2200	135 0
770	780	58 8	2200	2300	140 0
780	790	59 4	2300	2400	145 0
790	800	60 0	2400	2500	150 0
800	810	60 12	2500	2600	155 0
810	820	61 8	2600	2700	160 0
820	830	62 4	2700	2800	165 0
830	840	63 0	2800	2900	170 0
840	850	63 12	2900	3000	175 0
850	860	64 8	3000	3100	180 0
860	870	65 4	3100	3200	185 0
870	880	66 0	3200	3300	190 0
880	890	66 12	3300	3400	195 0
890	900	67 8	3400	3500	200 0
900	910	68 4	3500	3600	205 0
910	920	69 0	3600	3700	210 0
920	930	69 12	3700	3800	215 0
930	940	70 8	3800	3900	220 0
940	950	71 4	3900	4000	225 0

BOMBAY—Contd

Table of rates of *ad valorem* fees leviable on plaints
and memo of appeal

When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee		When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee	
Rs.	Rs	Rs	As.	Rs	Rs	Rs	As
4000	4100	230	0	4500	4600	255	0
4100	4200	235	0	4600	4700	260	0
4200	4300	240	0	4700	4800	265	0
4300	4400	245	0	4800	4900	270	0
4400	4500	250	0	4900	5000	275	0

N B—For plaints of higher values see Bombay Act II c

BEHAR AND ORISSA.

Table and rates of '*ad valorem*' fees leviable on plaint
and memo of appeal

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fees under Behar and Orissa Act I of 1922		When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee under Behar and Orissa Act I of 1922	
		Rs	As			Rs	As
0	5	0	6	280	290	26	8
5	10	0	12	290	300	27	8
10	15	1	2	300	310	28	8
15	20	1	8	310	320	29	8
20	25	1	14	320	330	30	8
25	30	2	4	330	340	31	8
30	35	2	10	340	350	32	8
35	40	3	0	350	360	33	8
40	45	3	6	360	370	34	8
45	50	3	12	370	380	35	8
50	55	4	2	380	390	36	8
55	60	4	8	390	400	37	8
60	65	4	14	400	410	38	8
65	70	5	4	410	420	39	8
70	75	5	10	420	430	40	8
75	80	6	0	430	440	41	8
80	85	6	6	440	450	42	8
85	90	6	12	450	460	43	8
90	95	7	2	460	470	44	8
95	100	7	8	470	480	45	8
100	110	8	8	480	490	46	8
110	120	9	8	490	500	47	8
120	130	10	8	500	510	48	8
130	140	11	8	510	520	49	8
140	150	12	8	520	530	50	8
150	160	13	8	530	540	51	8
160	170	14	8	540	550	52	8
170	180	15	8	550	560	53	8
180	190	16	8	560	570	54	8
190	200	17	8	570	580	55	8
200	210	18	8	580	590	56	8
210	220	19	8	590	600	57	8
220	230	20	8	600	610	58	8
230	240	21	8	610	620	59	8
240	250	22	8	620	630	60	8
250	260	23	8	630	640	61	8
260	270	24	8	640	650	62	8
270	280	25	8	650	660	63	8

BEHAR AND ORISSA — *Contd*

When the amount of value of the subject matter exceeds	But does not exceed	Proper fee under Behar and Orissa Act I of 1922		When the amount of value of the subject matter exceeds	But does not exceed	Proper fee under Behar and Orissa Act I of 1922	
Rs	Rs	Rs	As	Rs	Rs	Rs	As
660	670	64	8	1 300	1 400	127	8
670	680	65	8	1 400	1 500	135	0
680	690	66	8	1 500	1 600	142	8
690	700	67	8	1 600	1 700	150	0
700	710	68	8	1 700	1 800	157	8
710	720	69	8	1 800	1 900	165	0
720	730	70	8	1 900	2 000	172	8
730	740	71	8	2 000	2 100	180	0
740	750	72	8	2 100	2 200	187	8
750	760	73	8	2 200	2 300	195	0
760	770	74	8	2 300	2 400	202	8
770	780	75	8	2 400	2 500	210	0
780	790	76	8	2 500	2 600	217	8
790	800	77	8	2 600	2 700	225	0
800	810	78	8	2 700	2 800	232	8
810	820	79	8	2 800	2 900	240	0
820	830	80	8	2 900	3 000	247	8
830	840	81	8	3 000	3 100	255	0
840	850	82	8	3 100	3 200	262	8
850	860	83	8	3 200	3 300	270	0
860	870	84	8	3 300	3 400	277	8
870	880	85	8	3 400	3 500	285	0
880	890	86	8	3 500	3 600	292	8
890	900	87	8	3 600	3 700	300	0
900	910	88	8	3 700	3 800	307	8
910	920	89	8	3 800	3 900	315	0
920	930	90	8	3 900	4 000	322	8
930	940	91	8	4 000	4 100	330	0
940	950	92	8	4 100	4 200	337	8
950	960	93	8	4 200	4 300	345	0
960	970	94	8	4 300	4 400	352	8
970	980	95	8	4 400	4 500	360	0
980	990	96	8	4 500	4 600	367	8
990	1 000	97	8	4 600	4 700	375	0
1 000	1 100	105	0	4 700	4 800	382	8
1 100	1 200	112	8	4 800	4 900	390	0
1 200	1 300	120	0	4 900	5 000	397	8

NB—For plaints of higher values see Behar and Orissa Act I of 1922

Court Fees Central Provinces C P. Act I of 1999 (Amendment)

[Court fees payable on plaints and memo of appeal]

For the second and third columns of Article I in the first Schedule to the Indian Court Fees Act the following shall be substituted namely

When the amount or value of the subject matter in dispute does not exceed Rs 100/	Seven and a half per centum of such amount or value
When such amount or value exceeds Rs 100/- but does not exceed Rs 1,000/	Ten per centum of such amount or value
When such amount or value exceeds Rs 1,000/ but does not exceed Rs 5,000/-	Rs 100/- plus seven and half per centum of the amount or value in excess of Rs 1,000/-
When such amount or value exceeds Rs 5,000/- but does not exceed Rs 10,000/-	Rs 400/- plus six per centum of the amount or value in excess of Rs 5,000/-
When such amount or value exceeds Rs 10,000/ but does not exceed Rs 20,000/-	Rs 700/- plus four and half per centum of the amount or value in excess of Rs 10,000/
When such amount or value exceeds Rs 20,000/ but does not exceed Rs 50,000/-	Rs 1,150 plus three per centum of the amount or value in excess of Rs 20,000/-
When such amount or value exceeds Rs 50,000/- but does not exceed Rs 1,00,000/	Rs 2,650/- plus two per centum of the amount or value in excess of Rs 50,000/-
When such amount or value exceeds Rs 1,00,000/	Rs 3,050/ plus one per centum of the amount or value in excess of Rs 1,00,000/-

Provided that the minimum fee shall be Re 1/- and the maximum Rs 5,000/- fraction of an anna shall be neglected

MADRAS.

Table of rates of *advalorem* fees leviable on plaints
and memo of appeals

When the amount or value of the subject-matter exceeds		But does not exceed	Proper fee		When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee	
Rs	Rs		Rs	As	Rs	Rs	Rs	As
0	5		0	8	250	260	29	3
5	10		1	1	260	270	30	5
10	15		1	10	270	280	31	7
15	20		2	3	280	290	32	9
20	25		2	12	290	300	33	11
25	30		3	5	300	310	34	13
30	35		3	14	310	320	35	15
35	40		4	7	320	330	37	1
40	45		5	0	330	340	38	3
45	50		5	9	340	350	39	5
50	55		6	2	350	360	40	7
55	60		6	11	360	370	41	9
60	65		7	4	370	380	42	11
65	70		7	13	380	390	43	13
70	75		8	6	390	400	44	15
75	80		8	15	400	410	46	1
80	85		9	8	410	420	47	3
85	90		10	1	420	430	48	5
90	95		10	10	430	440	49	7
95	100		11	3	440	450	50	9
100	110		12	5	450	460	51	11
110	120		13	7	460	470	52	13
120	130		14	9	470	480	53	15
130	140		15	11	480	490	55	1
140	150		16	13	490	500	56	3
150	160		17	15	500	510	57	5
160	170		19	1	510	520	58	7
170	180		20	3	520	530	59	9
180	190		21	5	530	540	60	11
190	200		22	7	540	550	61	13
200	210		23	9	550	560	62	15
210	220		24	11	560	570	64	1
220	230		25	13	570	580	65	3
230	240		26	15	580	590	66	5
240	250		28	1	590	600	67	7

MADRAS — *Contd.*Table of rates *ad valorem* fees &c (continued)

When the amount or value of the subject matter exceeds	But does not exceed	Proper fee	When the amount for value of the subject matter exceeds	But does not exceed	Proper fee
Rs	Rs	Rs A	Rs	Rs	Rs As
600	610	68 9	950	960	107 15
610	620	69 11	960	970	109 1
620	630	70 13	970	980	110 3
630	640	71 15	980	990	111 5
640	650	73 1	990	1 000	112 7
650	660	74 3	1 00	1 100	119 15
660	670	75 5	1 100	1 200	127 7
670	680	76 7	1 200	1 300	134 15
680	690	77 9	1 300	1 400	142 7
690	700	78 11	1 400	1 500	149 15
700	710	79 13	1 500	1 600	157 7
710	720	80 15	1 600	1 700	164 15
720	730	82 1	1 700	1 800	172 7
730	740	83 3	1 800	1 900	179 15
740	750	84 5	1 900	2 000	187 7
750	760	85 7	2 000	2 100	194 15
760	770	86 9	2 100	2 200	202 7
770	780	87 11	2 200	2 300	209 15
780	790	88 13	2 300	2 400	217 7
790	800	89 15	2 400	2 500	224 15
800	810	91 1	2 500	2 600	232 7
810	820	92 3	2 600	2 700	239 15
820	830	93 5	2 700	2 800	247 7
830	840	94 7	2 800	2 900	254 15
840	850	95 9	2 900	3 000	262 7
850	860	96 11	3 000	3 100	269 15
860	870	97 13	3 100	3 200	277 7
870	880	98 15	3 200	3 300	284 15
880	890	100 1	3 300	3 400	292 7
890	900	101 3	3 400	3 500	299 15
900	910	102 5	3 500	3 600	307 7
910	920	103 7	3 600	3 700	314 15
920	930	104 9	3 700	3 800	322 7
930	940	105 11	3 800	3 900	329 15
940	950	106 13	3 900	4 000	337 7

MADRAS—Contd

Table of rates of *ad valorem* fees &c

When the amount or value of the subject matter exceeds	But does not exceed	Proper fee		When the amount or value of the subject matter exceeds	But does not exceed	Proper fee	
Rs	Rs	Rs	As	Rs	Rs	Rs	As
4 000	4 100	344	15	4 500	4 600	382	7
4 100	4 200	352	7	4 600	4 700	389	15
4 200	4 300	359	15	4 700	4 800	397	7
4 300	4 400	367	7	4 800	4 900	404	15
4 400	4 500	374	15	4 900	5 000	412	7

PUNJAB,

Table of rates of *advalorem* fees leviable on plaints
and memo of appeals

When the amount or value of the subject matter exceeds	But does not exceed	Proper fee		When the amount or value of the subject matter exceeds	But does not exceed	Proper fee	
Rs	Rs	Rs	As	Rs	Rs	Rs.	As
	5	0	6	250	260	19	8
5	10	0	12	260	270	20	4
10	15	1	2	270	280	21	0
15	20	1	8	280	290	21	12
20	25	1	14	290	300	22	8
25	30	2	4	300	310	23	4
30	35	2	10	310	320	24	0
35	40	3	0	320	330	24	12
40	45	3	6	330	340	25	8
45	50	3	12	340	350	26	4
50	55	4	2	350	360	27	0
55	60	4	8	360	370	27	12
60	65	4	14	370	380	28	8
65	70	5	4	380	390	29	4
70	75	5	10	390	400	30	
75	80	6	0	400	410	30	1
80	85	6	6	410	420	31	8
85	90	6	12	420	430	32	4
90	95	7	2	430	440	33	0
95	100	7	8	440	450	33	12
100	110	8	4	450	460	34	8
110	120	9	0	460	470	35	4
120	130	9	12	470	480	36	0
130	140	10	8	480	490	36	12
140	150	11	4	490	500	37	8
150	160	12	0	500	510	37	6
160	170	12	12	510	520	38	4
170	180	13	8	520	530	39	10
180	190	14	4	530	540	40	12
190	200	15	0	540	550	41	14
200	210	15	12	550	560	42	0
210	220	16	8	560	570	42	8
220	230	17	4	570	580	43	4
230	240	18	0	580	590	44	0
240	250	18	12	590	600	45	8

PUNJAB—Contd

Table of rates of *ad valorem* fees leviable on plaints
and memo of appeals.

When the amount of value of the subject matter exceeds		But does not exceed		Proper fee	When the amount or value of the subject matter exceeds		But does not exceed		Proper fee
Rs	Rs	Rs	As		Rs	Rs	Rs	As	
600	610	68	10		950	960	108	0	
610	620	69	12		960	970	109	2	
620	630	70	14		970	980	110	4	
630	640	72	0		980	990	111	6	
640	650	73	2		990	1 0 0	112	8	
650	660	74	4		1 000	1 100	120	0	
660	670	75	6		1 100	1 200	127	8	
670	680	76	8		1 200	1 300	135	0	
680	690	77	10		1 300	1 400	142	8	
690	700	78	12		1 400	1 500	150	0	
700	710	79	14		1 500	1 600	157	8	
710	720	81	0		1 600	1 700	165	0	
720	730	82	2		1 700	1 800	172	8	
730	740	83	4		1 800	1 900	180	0	
740	750	84	6		1 900	2 000	187	8	
750	760	85	8		2 000	2 100	195	0	
760	770	86	10		2 100	2 200	202	8	
770	780	87	12		2 200	2 300	210	0	
780	790	88	14		2 300	2 400	217	8	
790	800	90	0		2 400	2 500	225	0	
800	810	91	2		2 500	2 600	232	8	
810	820	92	4		2 600	2 700	240	0	
820	830	93	6		2 700	2 800	247	8	
830	840	94	8		2 800	2 900	255	0	
840	850	95	10		2 900	3 000	262	8	
850	860	96	12		3 000	3 100	270	0	
860	870	97	14		3 100	3 200	277	8	
870	880	99	2		3 200	3 300	285	0	
880	890	100	2		3 300	3 400	292	8	
890	900	101	4		3 400	3 500	300	0	
900	910	102	6		3 500	3 600	307	8	
910	920	103	8		3 600	3 700	315		
920	930	104	10		3 700	3 800	322		
930	940	105	12		3 800	3 900	330		
940	950	106	14		3 900	4 000			

PUNJAB—*Contd*

Table of rates of '*advalorem*' fees leviable on the institution of suits

When the amount or value of the subject matter exceeds		But does not exceed	Proper fee		When the amount or value of the subject matter exceeds		But does not exceed	Proper fee	
Rs	Rxs		Rs	As	Rs		Rs	Rs	As
4 000	4 100		345	0	4 500	4 600		392	8
4 100	4 200		352	9	4 600	4 700		390	0
4,200	4 300		360	0	4 700	4 800		397	8
4,300	4 400		367	8	4 800	4 900		405	0
4 400	4 500		375	0	4 900	5 000		412	8

N.B. For plaints of higher values see Punjab Acts I and VI of 1926.

2 **Plaint in a suit for possession under sec 9 of the Specific Relief Act—duty—C F**—a fee of one half the amount prescribed for ordinary plaints (All Provinces)

3 **Application for review of judgment if presented on or after the ninetieth day after the decree—C F**—the fee leviable on the plaint or memorandum of appeal (All Provinces)

4 **Application for review of judgment, if presented before the ninetieth day from the date of the decree—C F** one half of the fee leviable on the plaint or memorandum of appeal All Provinces)

5 **Copy of translation of a judgment or order not being, or having the force of a decree—C F** when such judgment or order is passed by any Civil Court other than a High Court or by the presiding officer of any Revenue Court or office or by any other Judicial or Executive authority

(a) if the amount or value of subject matter be Rs 50/ or less than Rs 50/ C F—four annas

(b) if such amount or value exceeds Rs 50/—duty—eight annas

(c) When such judgment or order is passed by High Court—one rupee

Charge by Local Acts

	<i>Assam</i>	<i>Bengal</i>	<i>C P</i>	<i>Madras</i>	<i>Bihar & Orissa</i>
Class (a)	6 as	6 as	5as	6 as	6 as
Class (b)	12 as	12 as	Re 1	12 as	12 as
Class (c)	Re 1 8	Re 1 8	Rs 1 0	Pe 1 8	Re 1 8

6 **Copy of a decree or order having the force of a decree when such decree or order is made**

Civil Court other than a High Court or by any Revenue Court

Class (a) If the amount or value of the subject matter of the suit is up to Rs 50/-—C F—Eight annas

Class (b) If such amount or value exceeds Rs 50/- C F—one rupee

Class (c) When such decree is or order is made by a High Court—C F—Rupees four

Changes by Local Acts.

	Punjab	Bombay	B & O
Class (a)	8 as	Re 1/	12 as
Class (b)	Re 1/	Re 2/	Re 1/ 8 as
Class (c)	Rs 4/	Rs 4/	Rs 6/

7 Copy of any document liable to stamp duty under the Indian Stamp Act, 1879 when left by any party to a suit or proceeding in place of the original withdrawn—(a) when the stamp duty chargeable on the original does not exceed eight annas—duty—the amount of duty chargeable on the original (In any other case)—duty—Eight annas

Changes by Local Acts

	Behar and Orissa	Bombay
Class (a)	One and a half times the duty in the original	(a) Same duty as on the original
Class (b)	12 annas	(b) Rupee one

8 Copy of any revenue or judicial proceeding or order etc—for every 360 words or fraction thereof—C F—Eight annas

Changes by Local Acts

Assam	Bengal	C F	Madras	Behar and Orissa
8 as	8 as	8 as	8 as	12 as

Sch 1 (Art 12)

Duties for Succession Certificate

INDIAN COURT FEES ACT

Succession certificate for collection of debts due to the estate of a deceased person—duty—ordinary two per cent but 3 P C on the amount for which the certificate is subsequently extended Debt includes interest The market value of the debt or securities on the date of the application is taken into account and duty paid on the same *The duty is same whether the certificate be for collection of debt or for collection of interest only*

Changes by Local Acts

ASSAM

	<i>Original duty</i>	<i>Duty for extended certificate on s m for which extended</i>
(A) Value of debt or security—		
Up to Rs 1000	No duty	nil
(B) Over Rs 1000 up to Rs 10 000/	2 p c	3 p c
(C) Over Rs 10 000/ up to Rs 50 000/	$\left\{ \begin{array}{l} \text{up to Rs 10 000/} \\ \text{as for (B) and} \\ 3 \text{ p c on the} \\ \text{excess} \end{array} \right\}$	$\left\{ \begin{array}{l} \\ \\ 4\frac{1}{2} \text{ p c} \end{array} \right\}$
(D) Over Rs 50 000/ up to Rupees One lakh	$\left\{ \begin{array}{l} \text{up to Rs 50 000/-} \\ \text{as for (C) and} \\ 4 \text{ p c on} \\ \text{excess} \end{array} \right\}$	$\left\{ \begin{array}{l} \\ \\ 6 \text{ p c} \end{array} \right\}$
(E) Over One lakh	$\left\{ \begin{array}{l} \text{up to one lakh} \\ \text{as for (D) and} \\ \text{on the excess} \\ 5 \text{ p c} \end{array} \right\}$	$\left\{ \begin{array}{l} \\ \\ 7\frac{1}{2} \text{ p c} \end{array} \right\}$

BENGAL.*As in Assam.***BEHAR AND ORISSA.***As in Bengal and Assam.***BOMBAY.**

The same fee as for Probate and $1\frac{1}{2}$ time the said fee in case of extension of certificate

C. P

	<i>Original duty.</i>	<i>For extended certificate on the amount extended</i>
(A) Up to Rs 1 000/-	No duty.	nil
(B) Over Rs 1,000/ up to Rs 5,000	2 p c	3 p c
(C) Over Rs 5,000/- up to Rs 10,000/-	Rs 100 - plus 2½ p c on the amount over Rs 5,000 -	4½ p. c.
(D) Over Rs 10,000/-	Rs 250/- plus 3 p c. on the excess of Rs 10,000/-	7½ p. c.

MADRAS.

	<i>Duty on original certificate</i>	<i>On the amount or value to which extended.</i>
Where amount or value of debt or Security up to Rs 5 000/	2 p. c.	3 p c
Where such amount exceeds Rs 5,000/-	3 p c.	4½ p c

PUNJAB.

No change

U P.

No change

Art 11 of Schedule I (Duty for Probate and Letters of administration)

Probate of a will or letters of administration with or without will annexed	{	Where the amount or value of property is over Rs 1,000 and up to Rs 10,000	}	Two p. c
		When the amount exceeds Rs 10,000 but does not exceed Rs 50,000		Two and a half p c.
	{	When value is over Rs 50,000	}	Three p c

Provided that when after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act or under the Regulation of the Bombay Code, No VIII of 1827, in respect of any property included in an estate, a grant of probate or a grant of administration is made in respect of the same estate, the fee payable in respect of the letter grant shall be reduced by the amount of the fee paid in respect of the former grant

Changes by Local Acts.**ASSAM**

- (a) Over Rs 2000 up to Rs 10,000 Two per cent on such amount or value
- (b) Over Rs 10,000 up to Rs 50 000 . up to Rs 10,000 2 per cent and for the amount in excess of Rs 10,000, 3 per cent.

- | | |
|--------------------------------------|---|
| (c) Over Rs 50 000 up to Rs 1 00 000 | up to Rs 50 000 as in (b) and for the amount in excess of Rs 50,000, 4 per cent |
| (d) Over Rs 1,00 000 to any amount | up to Rs 1,00 000 as in (c) and for the amount in excess of Rs 1 00,000, 5 per cent |

BENGAL*Same as in Assam***BEHAR AND ORISSA***Same as in Assam***BOMBAY.**

- | | |
|-------------------------------------|---|
| (a) Over Rs 1000 up to Rs 10,000 | { Two per cent on the part of the amount or value is excess of Rs 1 000 up to Rs 10 000 |
| (b) Over Rs 10 000 up to Rs 50 000 | { up to Rs 10 000 as for (a) and for amount in excess of Rs 10 000 3 per cent |
| (c) Over Rs 50,000 up to one lakh | { up to Rs 50 000 as for (b) and for the amount in excess of that 4 per cent |
| (d) Over one lakh and up any amount | { up to Rs 100 000 as for (c) and for the amount in excess, 5 per cent |

C. P.

When the amount or value of the property is over Rs 1,000 and up to Rs 5,000	{	Two per cent
When over Rs 5,000 and upto Rs 10,000	{	Rs 100 <i>plus</i> two and a half per cent over the amount in excess of Rs 5,000
When over Rs. 10,000	{	Rs 250 <i>plus</i> three per cent on the amount in excess of Rs 10,000

MADRAS

Up to Rs 5,000.	Two per cent
Over Rs 5,000 up to any amount	Three per cent

PUNJAB.

No change

U P

No change

The Court Fees Act of 1870**Sch. II.**

1 Application or petition presented	Rs. As P
(a) in a suit below Rs 50/ or for copy0	0 1 0
(b) To any Magistrate or Collector or civil court in cases valued at over Rs 50/- or for deposit of rent or revenue or for determination of compensation payable by landlord to tenant	} 0 8 0

(c) When presented to Chief Commissioner, Chief controlling Revenue or Executive Authority, Divisional Commissioner. } 1 0 0

(d) To High Court. } 2 0 10

(e) For calling record [Besides cost of application, postage extra] } 0 12 0

Changes by Local Acts

In Bengal—1 (a) 2 as 1 (b) .12 as but when containing a complaint of a criminal offence Re. 1 1 (c) Re. 1-8 as-, 1 (d) "To High Court "

"When under Sec. 115 C. P. Code for revision—(a) when relates to suit valued up to Rs 1000/- —Rs. 5/- (b) When exceeds Rs 1000/- —Rs 10/-, (c) When presented under any other section—Rs. 2/-, 1 (e)—as. -/12/

ASSAM.

1 (a)—2 as , 1 (b)—10 as but containing a complaint of an offence presented to a Magistrate. Re. 1 ;

1 (c) Re 1/8 as , 1 (d)—Rs 2/- 1 (e)—12 as.

BEHAR AND ORISSA.

1 (a)—2 as. 1 (b)—12 as , 1 (c)—Re. 1-8 as. ; 1 (d)—Rs. 3/- ; 1 (e)—12 as.

BOMBAY.

(a) —2 as. ; (b) —8 as ; (c) Rs 2/- (d) Rs. 3/- (e) no change.

C. P.

(a) 2 as. ; (b) 12 as. but in case of criminal complaint Re. 1/- (c) (i) When presented to the Commissioner of Revenue or Divisional Commissioner

Rs 2 (ii) when presented to a chief controlling authority or Executive authority Rs 4/ (iii) When presented to a judicial commissioner Rs 2 - (IV) for revision of an S C C order Rs 3 (d) as in Bengal, (e) no change

MADRAS

(a) 1 anna or 2 as—according to the nature of the application See Madras Act No V of 1922 Schedule II art I (b) 12 as for criminal complaint Re 1 for deposit of rent or revenue 8 as determination of compensation between Landlord and tenant 8 as (c) Re 1 8 (d) as in Bengal (e) 12 as

PUNJAB

(a) 2 as (b) Re 1 (c) no change (d) (i) when presented to the High Court under the Indian Companies Act for winding up a company Rs 100

(ii) under the same Act for any other proceeding Rs 5

(iii) for any other case filed in High Court Rs 2

U P

No change

1 Application for leave to sue as pauper—8 as (All Provinces)

3 Application for leave to appeal as pauper—

(i) when presented to a District Court—one rupee

(ii) when presented to a commissioner—or High Court—two rupees

4

5 Plaint or memorandum of appeal in a suit to establish or disprove occupancy right—Eight annas [In the Punjab the duty is one rupee]

6 Bail bond in civil or criminal court—Eight annas [Bombay Re 1]

7 Undertaking under sec 49 of the Indian Divorce Act (Act IV of 1869)—Eight annas [In Bombay and Bengal Re 1]

8 and 9—Repealed

10 **Mukternama or Vakalatnama**—(a) in civil or criminal court—8 as (b) before Commissioner of Revenue or Divisional Commissioner Re 1, (c) before High Court, Board of Revenue and the Chief Controlling Revenue or Executive authority Rs 2

Changes by Local Acts

Bengal—(a) Re 1/2, (b) Re 1 8 as, (c) no change

Assam—Same as in Bengal

Behar and Orissa—(a) Re 1, (b) Rs 2, (c) Rs 3,

Bombay—as in Behar and Orissa

C P—(a) 8 as, (b) Re 1 8 as, (c) Rs 2,

Punjab—(a) Re 1, (b) Re 1, (c) Rs 2,

U P—(a) 8 as, (b) Re 1, (c) Rs 2,

Madras—(a) Re 1, (b) Re 1 8 (c) Re 3

II Memorandum of appeal when not from a decree or order having the force of a decree presented (a) to any District Court or to a Commissioner—Eight annas (b) to a High Court or a Chief Commissioner or other Chief Controlling Executive or Revenue authority—Rs 2

Changes by Local Acts.

Bengal—a (1) to any Revenue or Executive officer other than the High Court or Chief Controlling Revenue or Executive Authority—Eight annas

a (11) To any Civil Court other the High—Court—One rupee

b (1) To a Chief Controlling Executive or Revenue Authority—Two rupees

b (11) To a High Court—Five rupees

Assam—a (1) To any revenue Court or Executive officer other than the High Court or Chief Controlling Revenue or Executive Authority—Eight annas

a (11) To any Civil Court other than a High Court—One rupee

(b) To a Chief Controlling Executive or Revenue Authority—Two rupees

BEHAR, ORISSA AND BOMBAY.

No change

C. P.

(a) Rs 2, (b) Rs 4

MADRAS.

(a) Re 1, (b) Rs 2,

PUNJAB

(a) Re 1 (b) Rs 4

U. P.

No change

12 Caveat Rs 5

<i>Benqal</i>	<i>Assam</i>	<i>Bihar and Orissa</i>	<i>Bombay</i>
Rs 10	Rs 10	Rs 10	Rs 10
<i>C P</i>	<i>Madras</i>	<i>Punjab</i>	<i>U P</i>
Rs 5	Rs 10	Rs 5	No change

(Amending Act has been repealed)

14 Petition in a suit under the Native Converts Marriage Act—Five rupees [In Bombay the duty is Rs 10, in Bihar and Orissa—Rs 10]

15 and 16—Repealed

17. *Plaint or memorandum of appeal in each of the following cases —*

(i) To alter or set aside a summary decision or order of any Civil Courts not established by Letters Patent or of any Revenue Court—Ten rupees

(ii) To alter or cancel any entry in a register of the names of proprietors of revenue paying estates—Ten rupees

(iii) To obtain a declaratory decree where no consequential relief is prayed—Ten rupees,

(iv) To set aside an award—Ten rupees

(v) To set aside an adoption—Ten rupees

(vi) Every other suit where it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided for by this Act—Ten rupees

Changes by Local Acts

	<i>Bengal</i>	<i>Assam</i>	<i>Bombay</i>	<i>C P</i>	<i>Punjab</i>	<i>Behar & Orissa</i>
Class (i)	Rs 15	Rs 15	Rs 15*	Rs 15	no change	Rs 15
Class (ii)	15	15	15	15		15
Class (iii)	20	15	15	15		15
Class (iv)**	15	15	15*	15		15
Class (v)	20	20	15	20		15
Class (vi)	15	15	15	15		15

In Madras

The amendments are as follows

17	Plaint or memorandum of appeal in a suit	
(i)	to alter or set aside a summary decision or order not of a High Court or Revenue Court	Rs A P 15 0 0
(ii)	to alter or cancel any entry of names of revenue paying proprietors	15 0 0

* Rs 10 when amount or value of property up to Rs 500

** In Bombay cl iv includes a suit to set aside an alienation decree or adoption

(iii) for relief under sec 14 of Religious Endowments Act or under sec 91 or 92 of the C P Code (1908)	Rs A P
	50 0 0
17 A (i) to claim a declaratory decree without consequential relief (ii) to set aside an award (iii) to declare an adoption invalid or valid	
(a) if filed before District Munsif or the City Civil Court	15 0 0
(b) if before a District Court or a Sub Court —(i) if the value of the suit for jurisdiction purposes is less than Rs 10 000—duty Rs 100 (ii) if the value for jurisdiction purposes be over Rs 10 000—Duty—Rs 500	
17 B Complaint or memo of appeal where it is not possible to estimate the money value of the subject matter	
(i) if filed in Revenue Court	10 0 0
(ii) if filed in District Munsiff's or the City Civil Court }	15 0 0
(iii) if filed in District Court or Sub Court	100 0 0
18 Application under Schedule II Rule 17 of the C P Code (1908)	10 0 0

Local Amendments

Assam. Bengal Bihar & Orissa Bombay C P Madras Punjab
 Rs 10 Rs 10 Rs 15 Rs 10 Rs 10 Rs 15 Rs 10

19 Agreement in writing stating a question for opinion of the Court under the Code of Civil Procedure	Rs 10
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<i>Assam</i>	<i>Bengal</i>	<i>Bihar & Orissa</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>
Rs 10	Rs 10	Rs 15	Rs 20	Rs 10	In Sub- Courts and District Courts Rs 100 in other Courts Rs 10	Rs 10

- 20 Every petition under the Indian Divorce Act, except petition under Sec 44 of the same Act, and every memorandum of appeal under Sec 55 of the same Act Rs 20

Local Amendments

<i>Assam</i>	<i>Bengal</i>	<i>Bihar & Orissa</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>
Rs 20	Rs 20	Rs 30	Rs 30	Rs 20	Rs 20	Rs 20

- 21 Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865 Rs 20

Local Amendments

<i>Assam</i>	<i>Bengal</i>	<i>Bihar & Orissa</i>	<i>Bombay</i>	<i>C P</i>	<i>Madras</i>	<i>Punjab</i>
Rs 20	Rs 20	Rs 30	Rs 30	Rs 20	Rs 20	Rs 20

[N B—No change in U P under any article of C F Act or the amending Act of 1923 has been repealed]

Rulings and notes under the Court Fees Act (Schedule I)

Clause 1 (a) Written statement containing claim of set off to be properly stamped—*vide* 8 C. W N 174

N B—This case was not followed in 10 C W N 194

(b) Application to enforce a private award is not a plaint but an application—*vide* I L R 10 Cal 11

(c) Appeal

If the Court refuses to enforce the award and an appeal is filed the memorandum of appeal must contain the *ad valorem fee* on the subject matter
Vide I L R 23 Cal 723 F B

(d) Memorandum of appeal against an order refusing to make a mortgage decree absolute must bear *ad valorem fee*—*Vide* 12 C W N 1028

Clause 2 Plaint in suit for possession of property under section 9 of the Specific Relief Act—one-half of the *ad valorem fee* need be paid on the plaint

N B—No appeal lies against a decree passed in such a case

Clause 4 When review is sought in respect of a part of a claim—court fees under this clause have to be paid on the portion of the claim—see I L R 4 Bom 26

Clause 8 Copies of books of account certified by a ministerial officer of the Court to be kept with the record need not bear court-fees—see Bengal Government Resolution No 1608 dated 27 2 1886

Clause 9 Copies of birth and death registers should be stamped—see Govt Resolution No 6717 dated 26 12 1888

Clause 11 In Probate cases property involved in litigation may be valued at less than Rs 1000 i.e. at much less than its actual value See the case of *Abdool* I L R 23 Cal 577 For valuation of properties subject to mortgage—see 16 W R 253

Clause 12. For the meaning of the word security see the Indian Succession Act, Section 3, Cl. 2.

Refund of Court-fees.

Court-fees realised in stamps may, under certain circumstances, be refunded by order of the Court. Each case is left to the discretion of the Court and decided on its merits (*vide* H. C. C. O. Ch. IX Rule 47). Unspent process fees may be refunded: Court-fees paid in appeal may, under certain circumstances, be refunded if the case is remanded (*See* sec. 13 of C. F. Act). For refund of fees—an application in review—if it is granted (*See* sec. 14, C. F. Act) If the Court reverses or modifies its former decision on the ground of mistake—court-fees paid on the application for review may be refunded—*vide* sec. 15 of the C. F. Act.

Where application for refund to be made.

Application for the refund of the value of court-fee stamps is to be made to the chief ministerial officer of the Court. (*Uide* H. C. C. O. Ch. IX Rule 47.)

Documents not chargeable with Court-fees.

1. Written statements called by the Court: 2. Probate or Letters of Administration in respect of property valued at less than Rs. 1,000: 3. Application to Government to supply water for irrigation: 4. Application for service of notice of relinquishment of land or of enhancement of rent: 5. Written authority to an agent to distrain.

N.B.—For the above and other cases—*See* sec. 10 of the C. F. Act.

PART X.

APPENDIX (A).

CHAPTER II.

THE SUITS VALUATION ACT.

Act No. VII of 1887

An Act to prescribe the mode of valuing certain suits for the purposes of determining the jurisdiction of Courts with respect thereto

Whereas it is expedient to prescribe the mode of valuing certain suits for the purposes of determining the jurisdiction of Courts with respect thereto it is hereby enacted as follow —

1 This Act may be called the Suits Valuation Act 1887

PART I.

Suits relating to land

2 This part shall extend to such local areas, and come into force there on such dates, as the Governor General in Council by notification in the *Gazette of India* directs

Extent and commencement of Part I

3 (1) The Local Government may, with the previous sanction of the Governor General in Council make rules for determining the value of land for purposes of jurisdiction in the suits in the Court Fees Act, 1870,

Power for Local Government to make rules determining value of land for jurisdictional purposes

7, paragraphs v and vi, and paragraph x, clause (d)

(2) The rules may determine the value of any class of land or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area

4. Where a suit mentioned in the Court-fees Act, 1870, section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which, for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules

Valuation of relief in certain suits relating to land

5. (1) The Local Government, shall before making rules under section 3, consult the High Court with respect thereto

Making and enforcement of rules

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official Gazette

6 On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort Saint George in Council to which the Madras Civil Courts Act, 1873 extends, section 14 of that Act shall be repealed as regards that part of those territories

Repeal of section 14 of the Madras Civil Courts Act 1873

PART II.

7 This Part extends to the whole of British India, and shall come into force on the first day of July, 1887

Extent and commencement of Part II

8 Where in suits other than those referred to in the Court-fees Act, 1870, section 7, paragraphs v, vi, and ix and paragraph x, clause (d) Court-fees Act payable *ad valorem* under the Court-fees Act, 1870, the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same

Court fee value and jurisdictional value to be same in certain suits.

9 When the subject matter of suits of any class, other than suits mentioned in the Court fees Act, 1870, section 7, paragraphs v, vi, and paragraph x, clause (d) is such that in the opinion of the High Court, it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government direct that suits of that class shall, for the purposes of the Court fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject matters were of such value as the High Court think fit to specify in this behalf

Determination of value of certain suits by High Courts

10 [*Repealed of s. 32, Punjab Courts Act, 1884 (XVII of 1884) Rep by the Repealing and Amending Act, 1891 (XII of 1891)*]

PART III.

Supplemental Provisions

11 (1) Notwithstanding anything in section 578 of the Code of Civil Procedure (XIV of 1882), [corresponding with section 99 of the Civil Procedure Code of 1908] an objection that by reason of the over-valuation or under

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes

tion of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or the appeal exercised jurisdiction with respect thereto shall not be entertained by an Appellate Court unless —

(a) the objection was taken in the Court of first instance at or before the hearing at which such issues were first framed and recorded, or in the Lower Appellate Court in the memorandum of appeal to that Court, or

(b) Appellate Court is satisfied, for reasons to be recorded in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of the first instance or lower Appellate Court

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeal, but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence

to be taken, it shall direct its order to a Court competent to entertain the suit or appeal

(4) The provisions of this section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure [corresponding with section 115 of the Civil Procedure Code of 1908] or other enactment for the time being in force

(5) This section extends to the whole of British India, and shall come into force on the first day of July, 1887.

12 Nothing in Part I or Part II shall be considered to affect the jurisdiction of any Court—

(a) with respect to any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be or

(b) with respect to any appeal arising out of any such suit.

Notes on the Suits Valuation Act *

Vide notes on the Court Fees Act

Sections 4 and 8.

Valuation.

Ordinarily the plaintiff cannot put arbitrary valuation for purposes of jurisdiction, I L R 17 Cal 680, but in suits for declaratory decrees and injunctions

* For Court fees payable in a suit for specific contract of lease—See 26 C W N 768

plaintiff is at liberty to fix any valuation, I. L. R 17 Bom 56. Valuation for jurisdiction and valuation for court-fees are distinct things; 15 W. R 39 In declaratory suits and in suits for possession of land by landlords against tenants though Court fees are charged on artificial value for that purpose (not on the market-value of the property) still for purposes of jurisdiction market-value of the property involved in the suit has to be taken I L R. 5 Cal. 489 (*Vide* 31 Indian Case 104)

Redemption suits.

In these suits—jurisdiction is determined by the amount due on the mortgage, I L R 11. Bom 591; 5 All 332, but court-fees are levied on money secured by the deed—*See* sec 7 of C F Act

Pre-emption suits.

Vide Note No 17 on C F. Act given before and I. L R 13 Cal 255

Suits for setting aside a document.

See rulings given before under C F Act (No 13)

Declaratory suits.

See rulings given before under C F Act.

Suits to impugn a decree and for setting aside title-deeds.

See rulings given before on C F Act

Suit after claim case

See rulings given before on C F Act

Suits for account.

See rulings given before on C F. Act.

Section 11

Over-valuation and under-valuation.

If the decision is not materially affected and the parties are not prejudiced by the trial—the defect of jurisdiction is cured, 9 C W N 556 and 136, I L R 24 Cal 661 See I L R 25 All 174

Designed over-valuation

If done for giving jurisdiction to a Court which ordinarily cannot try the suit and if the suit is tried on the merits without prejudice to the parties—the High Court does not interfere I. L. R. 24 Cal 661

Bonafide error in valuation.

Decree cannot be reversed on this ground if the jurisdiction of the first Court was not affected 24 W R 225 I L R 1 Bom 163

Question of valuation when to be decided

This should be decided before trial on the merits, I L R 8 Cal 975

Consent of Parties

Such consent cannot give jurisdiction to Court I. L. R 13 Cal 849

PART X.

CHAPTER III

APPENDIX (A)

Citing of witnesses.

PROCESS FEES

**As prescribed by the different High Courts in
India**

For taking out processes from Courts prescribed fees have to be paid. The fee is paid in Court fee stamp by affixing the same on a piece of demi paper containing the names of the parties, number of the case and name of the Court and names and description of the witnesses required to be summoned.

Different scales of fees have been prescribed by the different High Courts for different kinds of cases and according to the nature and value of suits and proceedings arising therefrom.

Parties are besides required to pay travelling and other expenses of witnesses [as mentioned in chapter VI of part I* in Court when applying for summons. The scale of expenses allowed to witnesses have been given in appropriate places.

Process fees in Bengal. (A)

**Table of fees in the High Court, Appellate
jurisdiction**

*For scales of expenses—see Part X Chap. IV (next chapter)

Rs. a. p.

Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required and where not more than 4 persons are to be served with the same document,
one fee 3 0 0

When such persons are more than 4 in number, then the fee above mentioned, and an additional fee of 8 as for every such person in excess of 4 0 8 0

Article 2.—In every case in which personal or substituted service of any process on any persons who are not parties is required when the number of such persons is not more than 4,
one fee 3 0 0

When there are more than 4 such persons, then the fee above-mentioned for the first four and an additional fee of 8 as. for every person in excess of that number ... 0 8 0

Article 3.—For the execution of a warrant for arrest of a person 3 0 0

Article 4.—For service or execution of any process issued by the Court, not specified in any preceding article of this part 3 0 0

(B)

In the Courts of Judges and Subordinate Judges and in the Revenue Courts in which the process is issued and the claim is valued at a sum exceeding Rs 1,000—

PART X.

CHAPTER III

APPENDIX (A).

Citing of witnesses.

PROCESS FEES

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Process fees in Bengal.

(A)

Table of fees in the High Court, Appellate jurisdiction.

*For scales of expenses—see Part X Chap IV (next chapter)

Rs a p

Article 1—In every case in which personal or substituted service of any process on parties to the cause is required and where not more than 4 persons are to be served with the same document, *one fee* 3 0 0

When such persons are more than 4 in number, then the fee above mentioned, and an additional fee of 8 as for every such person in excess of 4 0 8 0

Article 2—In every case in which personal or substituted service of any process on any persons who are not parties is required when the number of such persons is not more than 4 *one fee* 3 0 0

When there are more than 4 such persons, then the fee above mentioned for the first four and an additional fee of 8 as for every person in excess of that number 0 8 0

Article 3—For the execution of a warrant for arrest of a person 3 0 0

Article 4—For service or execution of any process issued by the Court, not specified in any preceding article of this part . 3 0 0

(B)

In the Courts of Judges and Subordinate Judges and in the Revenue Courts in which the process is issued and the claim is valued at a sum exceeding Rs 1,000—

Rs a. p

Article 1—In every case in which personal or substituted service of any process on parties to the cause is required where not more than 4 persons are to be served with the same document, *one fee*

2 0 0

When such persons are more than four in number the fee above mentioned, and an additional fee of 8 as for every such person in excess of 4

0 8 0

Article 2—In every case in which personal or substituted service of any process on any persons who are not parties is required when the number of such persons is not more than 4, *one fee*

2 0 0

When there are more than four such persons then the above fees for the first 4, and an additional fee of 8 as for every one in excess of that number

0 8 0

Article 3—Where process of attachment of property by actual seizure is issued—

(a) For the seizure under the order of attachment

2 0 0

(b) For each man necessary to ensure safe custody of property so attached, when such man is actually in possession, *per diem*

0 6 0

	Rs	a	p.
Article 4—For the proclamation and publication of any order of prohibition under Order XXI, Rule 54 of the Civil Procedure Code, irrespective of the number of such proclamations or publications	2	0	0
Article 5—For the publication by posting up of a copy or copies of any notice or citation irrespective of the number of such publications	2	0	0
Article 6—For executing a decree by the arrest of the person	10	0	0
Article 7—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued —			
(a) For proclaiming the order of sale under Order XXI, Rule 66 of the Civil Procedure Code, a fee of	2	0	0
(b) For selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs 1,000 at the rate of	2	p	c
Together with a further fee on all excess of gross proceeds beyond Rs 1,000 at the rate of	.	1	p c
Article 8—For service of any process not specified in any preceding article of this part 2 0 0

Rs a p

Article 1—In every case in which personal or substituted service of any process on parties to the cause is required where not more than 4 persons are to be served with the same document *one fee*

2 0 0

When such persons are more than four in number the fee above mentioned and an additional fee of 8 as for every such person in excess of 4

0 8 0

Article 2—In every case in which personal or substituted service of any process on any persons who are not parties is required when the number of such persons is not more than 4 *one fee*

2 0 0

When there are more than four such persons then the above fees for the first 4 and an additional fee of 8 as for every one in excess of that number

0 8 0

Article 3—Where process of attachment of property by actual seizure is issued—

(a) For the seizure under the order of attachment

2 0 0

(b) For each man necessary to ensure safe custody of property so attached when such man is actually in possession *per diem*

0 6 0

Rs a p.

Article 4—For the proclamation and publication of any order of prohibition under Order XXI, Rule 54 of the Civil Procedure Code, irrespective of the number of such proclamations or publications	2	0	0
Article 5—For the publication by posting up of a copy or copies of any notice or citation irrespective of the number of such publications	2	0	0
Article 6—For executing a decree by the arrest of the person	10	0	0
Article 7—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885, is issued —			
(a) For proclaiming the order of sale under Order XXI, Rule 66 of the Civil Procedure Code, a fee of	2	0	0
(b) For selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs 1,000 at the rate of	2	p	c
Together with a further fee on all excess of gross proceeds beyond Rs 1,000 at the rate of	1	p.	c
Article 8—For service of any process not specified in any preceding article of this part	2	0	

(C)

Rs a. p

[Except in the suits specified in part D]
 In the Courts of Munsiffs and of Small
 Causes, and in the Revenue Courts,
 when part B does not apply.

Article 1 —In every case in which personal
 or substituted service of any process
 on parties to the cause is required,
 where not more than 4 persons are
 to be served with the same document,
one fee 1 0 0

When such persons are more
 than 4 in number then the fee
 above mentioned and an additional
 fee of 4 as for every such person
 in excess of four 0 4 0

Article 2.—In every case in which perso-
 nal or substituted service of any
 process on any persons who are not
 parties is required, when the number,
 of such persons is not more than
 four, *one fee* 0 1 0

Where there are more than four
 such persons, then the fee above-
 mentioned for the first four, and an
 additional fee of *four annas* for every
 one in excess of that number 0 4 0

Article 3—Where process of attachment of
 property by actual seizure is issued—

(a) For the seizure under the order
 of attachment 1 0 0

(PROCESS F BENG)

Rs a p

(b) For each man necessary to ensure the safe custody of property so attached when such man is actually in possession *per diem* 0 4 0

Article 4—For the proclamation of order of prohibition under Or XXI, R 54 of the C P Code irrespective of the number of proclamations 1 0 0

Article 5—For the publication by posting copy of copies or notification, not specially mentioned in this part irrespective of number 1 0 0

Article 6—For executing a decree by arrest of the person 4 0 0

Article 7—When order for sale of property other than property under Act VIII of 1885 is issued—

(a) For proclaiming the order of sale under Or XXI R 66 of the C P Code a fee of 1 0 0

(b) For selling the property a percentage or poundage on the gross amount realized by the sale up to Rs 1000 at the rate of 2 p c together with a further fee on proceeds beyond Rs 1,000 at the rate of 1 p c

Article 8—For service of any other process not specified in this part .. 1 0

(D)

In the Courts of Munsifs, in Small Cause Courts and in Revenue Courts, where suit is for debt, damage to personal property or rent, and the claim does not exceed Rs 50

Article 1—In every case in which personal Rs a p
or substituted service of any process
on parties is required, number of
persons to be served not exceeding
4, *one fee* .. 0 8 0

Where more than 4 persons,
then the fee above-mentioned and
an additional fee of 4 as for every
such person in excess of four 0 4 0

Article 2—Do on persons not parties, for
each person to be served 0 4 0

Article 3—Process of attachment by seizure—

(a) For the seizure under an order
of attachment . 1 0 0

(b) For each man necessary for custody
of property, such person being ac-
tually in possession, *per diem* 0 4 0

Article 4—Proclamation of order of prohi-
tion under Order XXI, Rule 54 of
the Code of C P irrespective of the
number of such proclamations or
publications . 1 0 0

Article 5—For the publication by posting
up of a copy or copies of the notifica-
tion of any proceeding or process
not specifically mentioned in any
Article of this part irrespective of
the number of publications .. 1 0 0

	Rs	a	p
Article 6—For executing a decree by arrest of J D	1	0	0
Article 7—Where an order for the sale of property other than an order for the sale of distrained property under Act VII of 1885 is issued—			
(a) For proclaiming the order of sale under Order XXI Rule 66 of the C P C a fee of	1	0	0
(b) For selling the property a percentage or poundage on the gross amount realized by the sale up to Rs 1 000, at the rate of	2	p	c
Together with a further fee on all excess of gross proceeds beyond Rs 1 000 at the rate of	1	p	c
<i>N B</i> When a sale of immovable property is set aside under Order XXI Rules 89 91 92 of the C P C or under section 174 of the Bengal Tenancy Act no fee shall be charged for selling the property			

Process Fees in Bihar and Orissa

NATURE OF PROCESS	TABLE OF FEES											
	1 In the Courts of District Judges			2 In the Courts of Subordinate Judges			3 In the Courts of Munsifs & Revenue Courts where the suit in which process is issued is valued at over Rs 1000			4 Court of Munsifs & of small Causes and in Revenue Courts when the suit in which process is issued does not exceed Rs 1000 and exceeds Rs 50 in value		
	5 In Courts of Munsifs and of small Causes and in Revenue Courts where the suit does not											
	Rs As P			Rs As P			Rs As P			Rs As P		
Article 1—In any case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document—one fee.	3 0 0			1 8 0			0 12					
Where such persons are more than four in number, then the fee above-mentioned and an additional fee as mentioned in the table for every such person in excess of four.	0 12 0			0 6 0			0 6					
Article 2—In every case falling within columns 2 and 3 in which personal or substituted service of any process on any persons who are not parties is required when the number of such persons is not more than four, one fee	3 0 0			1 8 0								
When there are more than four such persons, then the fee above-mentioned for the first four, and an additional fee as mentioned in the table for every one in excess of that number	0 12 0			0 6 0			0 6 1					
In every case falling within column 4 in respect of a similar process for each person.												

Process Fees in Bihar and Orissa.—*contd.*

TABLE OF FEES

1	2			3			4		
	Rs	As	P	Rs	As	P	Rs	As	P
Article 3—Where process of attachment of property by actual seizure is issued									
(a) For the seizure under the order of attachment	3	0	0	1	8	0	0	12	0
(b) For each man necessary to ensure safe custody of property so attached when such man is actually in possession, <i>per diem</i>	0	9	0	0	6	0	0	6	0
Article 4—For the proclamation and publication of any order of prohibition under Order XXI Rule 54 of the Code of Civil Procedure irrespective of the number of such proclamations or publications	3	0	0	1	8	0	1	8	0
Article 5—For the publication by posting of a copy or copies of notification of any proceeding or process not specifically mentioned in an any article irrespective of the number of such publications	3	0	0	1	8	0	1	8	0
Article 6—For executing a decree by the arrest of the J D	15	0	0	6	0	0	1	8	0

Process Fees in Bihar and Orissa.

NATURE OF PROCESS	TABLE OF PFFS														
	1 In the Courts of District Judges			2 In the Courts of Subordinate Judges			3 In the Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs 1000			4 Court of Munsifs & of small Causes and in Revenue Courts when the suit in which process is issued does not exceed Rs 1000 and exceeds Rs 50 in value			5 In Courts of Munsifs and of small Causes and in Revenue Courts where the suit does not exceed Rs 50 in value		
	Rs	As	P	Rs	As	P	Rs	As	P	Rs	As	P	Rs	As	P
Article 7—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—															
(a) for proclaiming the order of sale under Order XXI Rule 66 of the Code of Civil Procedure a fee of				3	0	0	1	8	0	1	8	0			
(b) For selling the property a percentage or poundage on the gross amount realised by the sale up to Rs 1000 at the rate of				2	0	0	2	0	0	2	0	0			
				per cent			per cent			per cent					
Together with a further fee on all excess of gross proceeds beyond Rs 1000 at the rate of				1	0	0	1	0	0	1	0	0			
				per cent.			per cent.			per cent.					
Article 8—For service of any process not specified in any preceding article				3	0	0	1	8	0	1	8	0			

Note 1—When process of attachment mentioned in Article 3 is issued in a number of cases relating to the same or neighbouring villages the fees (a) must be paid in each case, the daily fees (b) only for the men actually employed

Note 2—When a sale of immoveable property mentioned in Article 7 is set aside under section 47 or under Order XXI or 92 of the Code of Civil Procedure or under section 174 of the Bengal Tenancy Act (VIII 1885) any poundage or other fee charged for selling the property shall on application, be refunded

Poundage.

Note (a) The percentage leviable shall be calculated on multiples of Rs 25/- i.e. a poundage fee of 8 as shall be levied for every Rs 25/ or part of Rs 25/- realised by the sale up to Rs 1000/- and in the case of proceeds of the sale exceeding Rs 1,000/ an additional fee of 4 as for every Rs 25/- or part thereof shall be levied

(b) In cases in which several properties are sold in satisfaction of one decree only one poundage fee, calculated on the gross sale proceeds should be levied 2 per cent being charged on the gross sale proceeds up to Rs 1000/ and one per cent on the such proceeds exceeding Rs 1,000/

*Table of Process fees fixed by the Allahabad High Court
In the High Court's Appellate Jurisdiction*

PART I.

Nature of Process

Proper fees

Article 1.—Notice of appeal or other notice to respondents, when the respondents are not more than four in number,—
one fee .

3 0 0

When such respondents are more than four in number then the fee above mentioned for the first

four, and an additional fee of eight annas for every such persons in excess of four provided that the aggregate amount of the fees levied under this article *shall not exceed fifteen rupees*

Article 2—Summons to witnesses when the witnesses are not more than four in number, *one fee* . 3 0 0

When such witnesses are more than four in number, then the fee above mentioned for the first four, and an additional fee of eight annas for every such witness in excess of four

Article 3—Every warrant of arrest in respect of each person to be arrested, *one fee* 5 0 0

Article 4—Notice, proclamation, injunction or other order not specified in any preceding article of this part when the copies to be served or posted are not more than four in number, *one fee* 3 0 0

When such copies are more than four in number, then the fee above mentioned for the first four, and an additional fee of eight annas for every such copy in excess of four, provided that the aggregate amount of the fees levied under this article *shall not exceed fifteen rupees*

PART II.

In the Courts of District Judges, Subordinate Judges, and Judges of Courts of Small cases when exercising the powers of a Subordinate Judge conferred under section 31 of Act No IX of 1887 —

Article 1—Summons to defendants, notice of appeal or other notice to respondents when the defendants or respondents are not more than four in number, *one fee* 2 8 0

When such defendants or respondents are more than four in number, then the fee above mentioned for the first four, and an additional fee of ten annas for every such person in excess of four, provided that the aggregate amount of the fees levied under this article shall not exceed twelve rupees eight annas

Article 2—Summons to witnesses, when the witnesses are not more than four in number, *one fee* 2 8 0

When such witnesses are more than four in number, then the fee above mentioned for the first four and an additional fee of ten annas for every such witness in excess of four.

Article 3—Every order of attachment 1 4

Article 4—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rules 43, 44, 51 or 54 and section 46 of Act No. V of 1908 when property is to be attached in one town or village only, *one fee* 9 0 0

Where property is to be attached in more than one town or village specified in the order of attachment, and an additional fee of two rupees for every other town or village, provided that the aggregate amount of the fees levied under this article *shall not exceed fifteen rupnes*

Article 5—Every warrant of arrest in respect of each person to be arrested 3 12 0

Article 6—In respect of the services of each peon in whose custody a judgment-debtor is left under Or XXI, rule 40 (3) of Act No V of 1908, *per diem* 0 6 0

Article 7—Every order for the sale of property—(a) in respect of the order for sale 1 4 0

(b) by way of poundage on the full amount of purchase money—

The commission payable to the broker, and in addition a sum equal to one quarter of such commission, if the sale be conducted by an officer of the Court or by any other persons (not being a Collector or a broker) appointed by the Court 6½ p c.

Article 8—In respect of the services of the officer making delivery of possession of property under Or XXI, rules, 31, 35, 36, 95, 96, 98 or 101, of Act No V of 1908 when property is to be delivered in one town or village only, *one fee* 9 0 0

Article 9—Notice, proclamation, injunction or other order, not specified in any preceding article of this part, when the copies to be served or posted are not more than four in number *one fee* 2 8 0

When such copies are more than four in number then the fee above-mentioned for the first four and an additional fee of ten annas for every such copy in excess of four, provided that the aggregate amount of the fee levied under this article *shall not exceed twelve rupees eight annas*

Article 10—If the service of a process other than a warrant for the arrest of the person, be declared as "emergent" as described in chapter III, rule 16, in addition to the prescribed fee . 1 4 0

PART III.

(Except in the suits specified in Part IV.)

In the Courts of Munsifs and in Courts of Small Causes

Article 1—Summons to defendants when the defendants are not more than four in number, *one fee* . 1 4

When the defendants are more than four in number then the fee above mentioned for the first four and an additional fee of five annas for every such defendant in excess of four, provided that the aggregate amount of fees levied under this article *shall not exceed six rupees four annas*

Article 2—Summons to witnesses, when the witnesses are not more than four in number, *one fee* 1 4 0

When the witnesses are more than four in number then the fee above-mentioned for the first four and an additional fee of five annas for every such witness in excess of four—

Article 3—Every order of attachment 1 0 0

Article 4—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rules 43, 44, 51 and 54 and section 46 of Act No V of 1908 when the property is to be attached in one town or village only *one fee* 4 0 0

Article 5—Every warrant of arrest in respect of each person to be arrested 2 8 0

Article 6—Every order for the sale of property (a) in respect of the order of sale 1 0 0

(b) by way of poundage on the full amount of the purchase money as in Part II Art 7

- Article 7—In respect of the services of the officer making delivery of possession of property under Order XXI, rules 31, 35, 36 95, 96, 98, or 101 of Act No V of 1908 when the property is to be delivered in one town or village only *one fee* 4 0 0
- Article 8—Notice proclamation injunction or other order not specified in any preceding article of this part when the copies to be served or posted are not more than four number *one fee* 1 4 0
- Article 9—If the service of a process other than a warrant for the arrest of the person, be declared emergent as described in Chapter III, rule 16 1 0 0

PART IV.

In the Courts of Munsifs and in Courts of Small Causes in suits in which the amount or value of the subject matter in dispute does not exceed Rs 50/—

- Article 1—Summons to defendants when the defendants are not more than two in number, *one fee* 0 10 0

When the defendants are more than two in number then the fee above mentioned for the first two,

and an additional fee of three annas for every such defendant in excess of two; provided that the aggregate amount of the fees levied under the article *shall not exceed four rupees.*

- Article 2.—Summons to witness, in respect of each witness ... 0 5 0
- Article 3.—Every order of attachment ... 0 10 0
- Article 4.—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI rules 43, 44, 51 and 54 and Sec. 46 of Act No. V of 1908, when property is to be attached in one town or village only, *one fee* ... 2 0 0
- Article 5.—Every warrant of arrest in respect of each person to be arrested ... 1 4 0
- Article 6.—Every order for the sale of property—
- (a) in respect of the order of sale ... 0 10 0
- (b) by way of poundage on the full amounts of the purchase money—
as in Part II Article 7 ...
- Article 7.—In respect of the services the officer making delivery of possession of property under Or. XXI rules. 31, 35, 36, 95, 96, 98, or 101 of Act No. V of 1908, when the property is to be delivered in one town or village only, *one fee* ... 2 0 0
- Article 8.—Notice, proclamation, injunction, or other order not specified in any

preceding article of this part, when the copies to be served or posted are not more than two in number, *one fee* 0 10 0

Article 9 — If the service of a process, other than a warrant for the arrest of the person, be declared “emergent” as described in chapter III, rule 16 in addition to prescribed fee 0 10 0

Note — Notwithstanding rule 2, fees for process in execution of a decree or order for money shall be charged, irrespective of the grade of the Court issuing such processes and of the value of the original suit according to the amount including interest if any due upon the decree or order, that is to say, if such amount exceed Rs 1000/- fees shall be charged under Part II, if it be less than Rs 50 they shall be charged under Part III *and if* it do not exceed Rs 50/- they should be charged under Part IV.

Note — No fee shall be chargeable for serving or executing

(1) a process issued by any Court

(2) any process issued a second time for no fault of a party

MADRAS.

Scales of fees prescribed by the Madras High Court
Schedule :—Civil and Revenue Courts.

Nature of process	Amount leviable in					
	Any court of Small Causes District Munsif's Court or Revenue Court			A District Court or Sub-Judge's Court where the process is not issued in a Small Causes case		
	Rs	As	P	Rs	As	P
1 For each summons or notice—						
(a) to a single defendant respondent or witness	0	8	0	0	0	0
(b) to every additional defendant respondent or witness residing in the village, if the processes be applied for at the same time	0	4	0	0	8	0
2 For every warrant						
(a) of arrest in respect of every person to be arrested						
(b) of attachment in respect of every such warrant						
(c) of sale in respect of every such warrant	1	0	0	2	0	0
(d) of delivery of possession in respect of every such warrant With an additional fee for the services of every officer entrusted with the warrant for each day after the third day beginning with the day on which the warrant was issued.						
(e) if such officer is an Amlin	0	6	0	0	8	0
(f) if such officer is a peon	0	4	0	0	6	0
3 For every process in execution of Village Munsiff's decree	0	4	0			

MADRAS—*Contd.*

Nature of process	Amount leviable in					
	Any Court of Small Causes, District Munsif's Court or Revenue Court			A District Court or Sub-Judge's Court, where the process is not issued in a small causes case		
	Rs	As	P	Rs	As	P
4 For proclamation injunction or order and every process not otherwise provided for an additional fee being leviable after the third day as above	1	0	0	2	0	0
5 In respect of sales, a fee by way of poundage on the purchase money calculated at one anna in the rupee on the first 350 rupees half anna in the rupee on every additional sum up to Rs 1000 and quarter anna in the rupee on any additional sum above Rs 1000						

N. B.—When a sale is set aside under Section 310 A, Civil Procedure Code, the amount deducted as poundage from the deposit paid by the purchaser must be refunded to him and the judgment debtor is expressly exempted from the liability to pay the poundage by the wording of the Section itself.

NOTE 1.—Any party may deposit the cost of proceeding by Railway or any public conveyance, where such is available and in such case the process server shall be bound to proceed by such Railway or public conveyance and the cost so deposited shall be part of the cost of the cause.

NOTE 2.—For processes applied for and ordered to be executed as 'emergent' the fee will be the ordinary fee and half as much again.

N. B.—Each process should be paid for according to the time which it really occupies.

Expenses in City Civil Court.

Nature of processes issued by the Madras City Civil Court	Amount leviable					
	In suits in which the value of the subject matter in dispute does not exceed Rs 1000			In all other suits		
	Rs	As	P	Rs	As	P
I For each summons or notice						
(a) to a single defendant or witness	0	8	0	1	0	0
(b) to every additional defendant or witness residing in same municipal division of the city of Madras if the processes be applied for at the same time,	0	4	0	0	8	0
II For every warrant—						
(a) of arrest in respect of every person to be arrested,						
(b) of attachment in respect of every such warrant,	1	0	0	2	0	0
(c) of sale in respect of every such warrant—						
(d) of delivery of possession in respect of every such warrant—						

Expenses in City Civil Court—*Contd.*

Nature of processes issued by the Madras City Civil Courts	Amount leviable					
	In suits in which the value of the subject matter in dispute does not exceed Rs 1000			In all other suits.		
	Rs	As.	P.	Rs	As	P.
With an additional fee for the services of every officer entrusted with the execution of the warrant for each day occupied after the third day beginning from the day on which the warrant was issued	0	4	0	0	6	0
III For every proclamation, injunction or order	1	0	0	2	0	0
An additional fee being leviable after the third day as above	0	4	0	0	6	0
IV For every process not otherwise provided for herein	0	8	0	1	0	0

V. In respect of sales, a fee by way of poundage on the purchase money calculated at $\frac{1}{2}$ anna in the rupee on the first 500 rupees and one anna in the rupee on any additional sum above 500 rupees.

Process fee (Bombay)

Scales of fees prescribed by the Bombay High Court
TABLE

Name of Process	Amount leviable in								
	Any Court of Small causes and any Subordinate Judge's Court in a suit in which no second appeal lies as provided in the Code of Civil Procedure			District Courts and subordinate Judge's Court in cases not provided in the preceding column			Mamlat-dar's Courts		
	Rs	As	P	Rs	As	P	Rs	As	P
For each summons or notice (a) to a single defendant, respondent or witness	0	4	0	1	0	0	3	0	0
(b) to every additional defendant, respondent or witness residing in the same village	0	2	0	0	8	0	2	0	0
II For every warrant (a) of arrest in respect of every person to be arrested	0	8	0	2	0	0			
(b) of attachment in respect of such warrant	0	8	0	2	0	0			
(c) of sale in respect of every such warrant	0	8	0	2	0	0			
II For proclamation injunction or order and every process not otherwise provided for.	0	8	0	2	0	0			

Note (a) Re issue of processes unserved—when a process issued by a Civil Court other than a Mamlatdar's Court is returned unserved a half fee only shall be charged with occasion of each re issue

Note (b) Issue of second process on service being set aside etc —

When the service is set aside in an enquiry made under Sec 87 Civil Procedure Code or when witnesses etc., have to be summoned a second time in consequence of the Court not sitting or not taking up or not completing the hearing of the case on the day on which they were first summoned, no further fee is to be levied upon re issue

Note (c) No fee is to be charged for any process issued by a Court of its own motion

Process fees in C P

The courts in C. P. for purposes of levying Process-fees are divided into three grades as follows :—

Grades.	Courts.
First	The courts of the Agent to the Governor General in Central India.
Second	First appellate Courts.
Third	District courts, Court of small causes and other civil Judges and courts of Magistrates.

11. Fees for the service of process shall be levied in each grade of court according to the following scale namely :—

Nature of process.	Courts of first grade.	Courts of 2nd grade.	Courts of third grade.
	Rs. As. P.	Rs. As. P.	Rs. As. P.
Summons, notice or other processes not being a warrant of arrest or attachment ...	2 0 0	1 0 0	0 4 0
Warrant of arrest ...	4 0 0	2 0 0	0 8 0
Warrant of attachment ...	4 0 0	2 0 0	2 0 0

V When any process other than a warrant of arrest or of attachment is to be served upon four or more persons being parties one fee only shall be charged in respect of the first four processes and an additional fee, according to the subjoined scale shall be charged for each process to be served in excess of four provided that the aggregate amount of the fee leviable under this rule shall not exceed the maximum prescribed for each grade of Court

Nature of process	Court of first grade	Courts of 2nd grade	Courts of third grade
	Rs As P	Rs As P	Rs As P
Rate of additional fee	0 8 0	0 4 0	0 2 0
Maximum	15 0 0	10 0 0	0 2 0

APPENDIX (A)

CHAPTER IV.

Expenses of Witnesses

Under Order XVI rule 2 of the Civil Procedure Code expenses of witnesses have to be paid into Court at the time of applying for summonses on witnesses. The Court has to assess the costs payable and in doing this the court is governed by the rules on the subject if any, framed by the High Court to which such court is subordinate but the court has always the discretion of allowing reasonable sum to experts summoned to give evidence in a case having regard

to the time occupied in giving evidence and doing such work as may be ordered by the court

Under rule 3 of Or XVI the serving officer is required to tender to the person summoned the expense allowed by the court

Abstract of the rules framed by some of the High Courts regarding classification of witnesses and expenses to be paid to them are noted below —

Scale of witness's expenses

Under rules framed by the Calcutta High Court

(BENGAL)

“ that money shall not be tendered to Government officers whose pay exceeds Rs 10 per mensem or whose head quarters are situate more than 5 miles from the court when they are summoned to appear as a witness in their official capacity in cases to which Government is a party .

In Bengal—

Witnesses are divided into 3 classes—

- (a) Labourer or poor classes ,
- (b) Cultivators or artizans, petty traders ,
- (c) Persons of better position

Diet Money

	Class (a)	Class (b)	Class (c)
(A) In 24 Perganas, Howrah and Darjeeling	6 annas per diem	10 annas per diem	Rs 5 per Diem
(B) In Burdwan, Presidency	—4 as p d.	—8 as p d	Rs 5 p d
(C) In other places	—4 as p d	—6 as p d	Rs 5 n

Exceptions—To pleaders, doctors and other persons following a profession any amount that may be fixed by the Court shall be paid as compensation (Vide H C O, Ch VI, Rule 8, clause 8)

Travelling Expenses

(1) By road, actual charge for reasonable conveyance subject to a maximum of 4 annas a mile

(2) Where the journey is wholly or partly by Rail or Steamer then for classes (a), (b) third class Railway or Steamer fare for class (c) 2nd class fare a 1st class fare where there is no 2nd class, should be allowed

(3) Where the only mode of travelling is by water—then boat-hire subject to a maximum of Rs 2 *per diem*

(4) Ferry and toll charges are paid in addition to the above charges

Note—No costs are allowed to any witness on account of his expenses if he is not entered in the Nazirs list (when the witness does not appear at the appointed time) nor when he is not actually examined. A party may examine such a witness by making a special petition for the purpose. Vide H C C O Ch. I Rule 51 (c)

(B)

Rules made by the High Court of Patna.

(BEHAR AND ORISSA)

Rules re *Government servant cited as a witness*

2 (1)—Add the following proviso to Or XVI, R 2 (1) of the C P Code

‘Provided that the Secretary of State shall not be required to pay any expenses into court under this

rule when he is the party applying for the summons, and the person to be summoned is an officer serving under Government, who is summoned to give evidence of facts which have come to his knowledge, or of matters with which he has had to deal in his public capacity."

(3) And the following proviso to R. 3 of the C P Code

"Provided that when the person summoned is an officer of Government who has been summoned to give evidence in a case to which Government is a party, of facts which have come to his knowledge, or of matters with which he has had to deal, in his public capacity, then (1) if the officer's salary does not exceed Rs 10 a month the court shall at the time of the service of the summons make payment to him of his expenses as determined by R. 2 and recover the amount from the Treasury

(ii) if the officer's salary exceeds Rs 10 a month and the court is situated not more than 5 miles from his head quarters the court may, at its discretion, on his appearance pay him the actual travelling expenses incurred.

(iii) if the officer's salary exceeds Rs 10 a month and the Court is situated more than 5 miles from his head-quarters no payment shall be made to him by the Court. In such cases any expenses paid into Court under R 2 shall be credited to Government

N. B—Classifications of witnesses and expenses payable are almost on the lines as prescribed in Bengal.

(C)

**Scale of witness expenses under rules framed by
the Allahabad High Court**

(U P)

The court shall allow travelling and other expenses on the following scale —

- (a) in the case of witnesses of the class of cultivators labourers and menials—six annas a day
- (b) in the case of witnesses of a better class—such as zemindars traders pleaders and persons of corresponding rank from *eight annas to two rupees a day as the court may direct* and
- (c) in the case of witnesses of superior rank, including officers of the Government in receipt of salary not less than Rs 200 a month *from 3 to 5 rupees a day*

(d) If a witness demand any sum in excess of what has been paid to him such shall be allowed if satisfy the court that he has actually and necessarily incurred the additional expenses

(e) If a witness be detained for a longer period than one day the expenses of his detention shall be allowed at such rate not usually exceeding the amount ordinarily payable as may seem to the court to be reasonable and proper

Provided that the court may for reasons stated in writing allow expenses on a higher scale than that hereinbefore prescribed

N B—The rule as to Government servant cited as a witness is same as in Bengal The rule is practically same in all Provinces with slight verbal modifications here and there

(D)

MADRAS

Scale of expenses under rules framed by
the Madras High Court.Rule re *Government Servant*

No payment shall be required when an application on behalf of Government is made for summons to a Government servant whose salary exceeds Rs 10 per mensem.

When any other party applies for summons he shall deposit in court the travelling and other expenses of the officer and the money so deposited shall be credited to Government

Where a Government servant appears the court shall grant him a certificate of attendance.

Notwithstanding anything contained in the rules, in any suit by or against the Secretary of State for India in Council, no payment in accordance with the rule shall be required when an application on behalf of Government is made for summons to a Government servant whose salary exceeds Rs 10 per mensem and whose attendance is required in a court situate more than five miles from his head quarters and the expenses incurred by Government in respect of the attendance of the witnesses shall not be taken into consideration in determining costs incidental to the suit.

(11) When any other party to such a suit applies for a summons to such an officer, he shall deposit in court along with his application a sum of money for the travelling and other expenses of the officer according to the scale prescribed in Civil ~ ,

Regulations and shall also pay any further sum that may be required according to the same scale and the money so deposited or 'paid shall be credited to Government.

Under the rules of the Madras High Court
Witnesses are divided into 3 classes.

- 1) First class—Persons of position in life.
- (2) Second class—Middle class—e. g. artisans, petty traders ;
- (3) Third class—Labourers of the poor class

1st Class.

If East Indian—1st class rail fare plus 8 as. per mile for road journey and an allowance of Rs. 5 per diem and actual expense of passage by sea or canal.

If a Native—Travelling expenses as above by daily allowance at Re. 1—per diem.

2nd Class.

If East Indian—Second 'class Railway fare plus 4 as per mile for road journey and subsistence allowance of Re. 1 per diem and actual expense of passage by sea or canal.

If Native—Second 'class Railway fare plus 2 as. per mile of road journey and subsistence allowance of 8 as per diem and actual expense of passage by sea or canal.

3rd Class.

If East Indian—3rd class Railway fare plus 2 as. per mile for road journey and subsistence allowance of 8 as. per diem and actual expense of passage by sea or canal.

If a Native—Travelling expenses as above and subsistence allowance of 4 as. per diem.

(E)

**Scale of witness expenses under rules framed
by the Bombay High Court
(BOMBAY)**

Re expenses of Government servant cited as a witness

Where Government or a public officer being a party to a suit or proceeding as such public officer supported by Government in the litigation, applies for a summons to any public officer to whom the Civil Service Regulations apply to give evidence of facts which have come to his knowledge, or of matters with which he has had to deal as a public officer or to produce any document from public records the Government or the aforesaid officer shall not be required to pay any sum of money on account of the travelling and other expenses of such witness'

where the witness is a public officer to whom the Civil Service Regulations apply and is summoned to give evidence of facts which have come to his notice or of facts with which he has had to deal, in his official capacity, or to produce a document from public records the sum payable by the party obtaining the summons on account of his travelling and other expenses shall not be tendered to him

(F)

**Scale of witness expenses under rules framed
by Lahore High Court.
(Punjab)**

For Rule 3 Order XVI of the C P Code—Substitute the following

3 (A) 'The sum so paid into a court shall in the case of a Government servant be

the person summoned at the time of serving the summons if it can be served personally."

(2) "when the person summoned is a Government servant the sum so paid into court shall be credited to Government."

"Exception (1). In cases in which Government servants have to give evidence at a Court situate not more than five miles from their head-quarters actual travelling expenses incurred by them may, when the Court considers it necessary, be paid to them."

Exception (2). "A Government servant whose salary does not exceed Rs. 10 may receive his expenses from the Court."

Special Rule re-insufficient expenses deposited.

Witnesses are allowed reasonable expenses for travelling, diet money and their remuneration—if the sum deposited be found insufficient—balance may be realised—"by attaching and sale of moveable property of the party obtaining the summons ; or the Court may discharge the persons summoned without requiring him to give evidence or may both order such.....and discharge such person....."

(G)

Scale of witness expenses under rules framed by the Rangoon High Court.

(BURMA.)

Government servant cited as a witness.

.....that in cases to which Government is a party—

(a) no payment into Court will be required for the travelling and other expenses, of a Government

servant who may be required to be summoned at the instance of Government to give evidence in his official capacity.

(b) the amount to be paid into Court for the travelling and other expenses of a Government servant whose salary exceeds Rs 10, and who may be required to be summoned at the instance of a party other than the Government to give evidence in his official capacity in a Court situate at a distance of more than five miles from his head-quarters shall be equivalent to the travelling and halting allowances admissible under the Civil Service Regulations

Scale of expenses allowed to witnesses under the rules of the Rangoon High Court

The witnesses are divided into following classes —

(1) *Ordinary labouring classes*—Railway, or steam boat fare by the lowest class,—actual travelling expenses up to a limit of Rs 2 a day by boat, and 4 as per mile by road and an allowance of 10 as for each day's absence from home

(2) *Petty village officers*—The same rates as above for travelling and an allowance of 14 annas for each day's absence from home

(3) *Persons of higher ranks of life—such as clerks, tradespeople village headmen and headmen of circles*—Second class railway or steam boat fare actual travelling expenses to a limit of Rs 4 a day, and an allowance not to exceed, except in special cases, Rs 1—8 as per each day's absence from home

(4) *Persons of Superior Rank*—The actual sum spent in travelling plus Rs 5 for each day's absence from home

(5) *Witnesses following any profession—a special allowance according to circumstances.*

N B Lodging allowance—In addition to the above a lodging allowance not exceeding, except in special cases, Re. 1—0—0 for persons in class (3), and Rs. 2 for persons in classes (4) and (5) may be allowed for each night spent away from home, if the Court is satisfied that the witness had to pay for his night's lodging. When an amount exceeding this scale is sanctioned as a special case, it shall not exceed the actual amount spent.

APPENDIX (B)

CHAPTER V.

In this part abstract of important rules framed by the different High Courts have been given for facility of reference by pleaders of the different Provinces.

(A)

Rules framed by the Calcutta High Court

No.	1	For rules re . arrangements of records—	See Part III (A)
„	2	„ „ „ Copies—	See Part III (A)
„	3	„ „ „ Pleader's fees—	See Part IV Chap I
„	4	„ „ „ Expenses allowed to witnesses	—Part X Chap IV
„	5	„ „ „ Process fees—	Part X Chap III
„	6	„ „ „ Guardian's fees—	See Part IV Chap I
„	7	„ „ „ Commissioner's fees—	See Part I Chap. IX

of live stock and other moveable property above the value of twenty rupees, are reproduced for general information

1 The attaching officer shall give the debtor, or, in his absence, any present adult member of his family, the option of having the attached property kept on his premises, or in some other place in the village, on condition that suitable place for its safe custody be provided for by him

2 If no such suitable place be provided, the officer shall remove the property to the Court at the decree-holder's expense. In the event of the decree-holder failing to provide the necessary funds, the attachment shall be withdrawn

3 Whenever the attached property is kept at the place where it is attached, the officer shall forthwith report the fact to the Court, and shall with his report forward an accurate list of the property seized, such that the Court may thereon at once issue the proclamation of sale prescribed by section 287. (Order XXI, Rule 66)

4 If the debtor shall give his consent in writing to the sale of the property awaiting the expiry of the term prescribed in section 290 (Order XXI, Rule 68) the officer shall receive the same and forward it without delay to the Court for its order.

5. When property is removed to the Court it shall be kept by the Nazir on his own sole responsibility in such place as may be approved by the Court. If the property cannot, from its nature or bulk, be conveniently kept in the Court premises or in the personal custody in the Nazir, he may, subject to approval by the Court make such arrangements for its safe custody under his own supervision as may be convenient and economical and the Court may fix the remuneration to be allowed to the persons, not being officers of the Court, in whose custody the property is kept

6 When the property remains at the place where it is attached in the custody of the attaching officer, and any person other than the judgment-debtor shall claim the same, or any part of it the officer shall nevertheless, unless the decree-holder desires to withdraw the attachment of the property so claimed

remain in possession and shall direct the claimant to prefer his claim to the Court

7 (a) If the decree holder shall withdraw an attachment or if it shall be withdrawn under Rule 2 or Rule 9 the attaching officer shall inform the debtor or in his absence an adult member of his family that the property is at his disposal

(b) In the absence of any person to take charge of it or in case the officer shall have had notice of claim by a person other than the judgment-debtor the officer shall if the property has been removed from the premises in which it was seized replace it where it was found at the time of seizure

8 Whenever live stock is kept at the place where it has been attached the judgment debtor shall be at liberty to undertake the due feeding and tending of it under the supervision of the attaching officer but the latter shall if required by the decree holder and on his paying for the same at a rate to be fixed by the District Judge and subject to the orders of the Court under whose orders the attachment is made engage the services of as many persons as may be necessary for the safe custody of it

9 In the event of the judgment debtor failing to feed the attached live stock the officer shall call upon the decree holder either to pay for feeding it on the spot or for the expenses attending its removal to the Court If the decree holder shall fail to provide for either the officer shall report the matter to the Court without delay

10 When attached live stock is brought to Court the Nazir shall be responsible for the safe custody and proper feeding of it so long as the attachment continues

11 If there be a Government pound in or near the place where the Court is held the Nazir shall be at liberty to place in it such attached live stock as can properly be kept there in which case the pound keeper will be responsible for the property to the Nazir and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impound cattle of the same description

12 If there be no pound available, or if, in the opinion of the Court, it be inconvenient to lodge the attached live stock in the pound the Nazir may keep it in his own premises or he may entrust it to any person selected by himself and approved by the Court. The Nazir will in all cases remain responsible for the custody of the property.

13 Each Court from time to time shall fix the rates to be allowed for the custody and maintenance of the various descriptions of live stock with reference to seasons and local circumstances. The District Judge may make any alteration he deems fit in the rate prescribed by courts subordinate to him. Where there are two or more Courts in the same place, the rates shall be the same for each Court.

14 The officer deputed to attach moveable property should be furnished with a certificate stating the period for which the Court fee required under Chapter V Rule 1, Article 3 Parts II, III and IV, of the Court Fee Rules has been paid, and he shall give notice thereof to the judgment debtor or other person at whose instance he remains in possession at the place of attachment, if such person shall desire that the property shall remain at that place for a longer period he shall be bound to pay in to Court in advance the further fee as required by the second paragraph of note 2 to that article.

No 11 —Insolvency rules framed by the Calcutta High Court

(H. C. C O Ch 11)

(1) The following rules may be cited as 'The Provincial Insolvency Rules'. The prescribed forms with such variations as circumstances may require, shall be used for the matters to which they severally relate.

(2) Every insolvency petition shall be entered in the Register of insolvency petitions and given a serial number.

(3) All insolvency proceedings may be inspected, at such times and subject to such restrictions as

the District Judge may prescribe, by the Receiver the debtor and any creditor

Notice

(4) Whenever publication of any notice or other matter is required by the Act or by those to be made in an official gazette a memorandum referring to and giving the date on which such advertisement appears shall be filed with the record and noted in the order sheet

(5) Notice of an order fixing the date of hearing of a petition under Sec 19 (2) shall be published in the local official gazette and in such newspapers as the Court may direct. A copy of the notice shall also be forwarded by registered letter to each creditor to the address given in the petition. The same procedure shall be followed in respect of notices of the date for the consideration of a proposal for composition or scheme of arrangement under Sec 38 (1)

(6) Notice of an order of adjudication under Sec 30 may in addition to the publication in the local official gazette required by the Act, be published in such newspapers as the Court may direct. When the debtor is a Government servant a copy of the order shall be sent to the head of the office in which he is employed. The same procedure shall be followed in regard to notices of orders annulling an adjudication under Sec 37 (2)

(7) The notice to be given by the court under Sec 50 shall be served on the creditor or his pleader or shall be sent through the post by registered letter

12 If there be no pound available or if in the opinion of the Court it be inconvenient to lodge the attached live stock in the pound the Nazir may keep it in his own premises or he may entrust it to any person selected by himself and approved by the Court The Nazir will in all cases remain responsible for the custody of the property

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(6) Notice of an order of adjudication under Sec 30 may in addition to the publication in the local official gazette required by the Act, be published in such newspapers as the Court may direct. When the debtor is a Government servant a copy of the order shall be sent to the head of the office in which he is employed. The same procedure shall be followed in regard to notices of orders annulling an adjudication under Sec 37 (2)

(7) The notice to be given by the court under Sec 50 shall be served on the creditor or his pleader or shall be sent through the post by registered letter

(8) The notice to be issued by the Receiver under Sec 64 before the declaration of a final dividend to the persons whose claims have been notified but not proved shall be sent through the post by registered letter

(9) Notices of the date of hearing of the application for discharge under Sec 41 (1) shall be published in the local official gazette and in such newspapers as the Judge may direct and copies shall be sent to all creditors by registered post whether they have proved their debts or not

(10) A certificate of an officer of the Court or of the official Receiver or an affidavit by a Receiver that any of the notices referred to in the preceding rules has been duly posted accompanied by the post office receipt shall be sufficient evidence of such notice having been duly sent

(11) In addition to the prescribed methods of publication any notice may be published otherwise in such manner as the Court may direct for instance by affixing copies in the Court house or by beat of drum in the village in which the insolvent resides

CHAPTER VI.

No 12—Inspection of Records by Pleders

(H C C O Chapter III Rule 2)

Pleders duly authorised by any person in that behalf may at a place to be provided for the purpose in Record keeper's office examine any special record but in doing so he shall make no notes other than such notes (to be written in pencil on all slips to be provided by the Record keeper) as may be necessary in order to identify the document or record which is being inspected

If any extract from the record is required it shall be obtained through the Copying dept in the usual way

V B This rule does not apply to the inspection of records of pending cases. It is for the presiding officer of the Court to prescribe as he thinks necessary, by general or special order upon what condition and at what time place and under the supervision of what officer such inspection may be allowed. He should be careful that his order does not interfere with the right to demand production of document on notice and the consequent right to take copies which an opposite party enjoys. The inspection of the records of pending cases is a privilege the abuse of which is not allowed. A pleader may take notes for his own information but the permission to make notes does not extend to verbatim copies of documents.

3 Pleaders before inspecting a record under the preceding rule shall pay the fee prescribed, but no searching fees should be levied from pleaders for the inspection of the record of a pending case or from a public officer inspecting records in the record room for public purposes.

The inspection of records in this Record-room by pleaders is allowed only on days on which the court is open and during such office hours as the District Judge may prescribe.

No 13 —Duty of a minor's guardian adlitem appointed by Court

H C C O Chapter 2 Rule 43 (A)

(1) When there are both major and minor defendants and there is no appearance the guardian should communicate with the natural guardian of the minor as well as with the

defendants by registered reply post card in which the subject matter of the suit should be briefly stated¹

2 Where the sole defendant is a minor the aforesaid communication should be addressed to his natural guardian

3 If no response is received to the communication mentioned in sub rules (1) and (2) or if the response is not helpful and the guardian is unable to have a personal interview with the defendants or their agents he should report the fact to the Court with a statement of the circumstances and apply for leave to go to the locality for necessary enquiry

4 The guardian's report on such local enquiry, if permitted should contain the following particulars

(a) Date and hour of departure for the locality

(b) Mode of journey viz whether by rail or steamer or boat or road

(c) The name of persons who identified the minor

(d) Age of the minor as stated by the minors people and as estimated by the guardian

(f) The name and residence of the persons in whose presence the enquiry is held

(g) Whether the minor has any defence

(h) If there is defence what is the nature of it and what benefit is expected to accrue to the minor out of the defence

(i) Whether the minor or his people are able and prepared to meet the costs of the defence and if not what is the probable amount of such costs

(j) If no defence is filed the reason thereof together with the statements of the persons on whose report the decision is arrived at

5 In case the court refuses to grant leave for local enquiry the guardian will proceed according to the instructions of the Court in each case

6. Where in response to the communication mentioned in sub rule (2) or otherwise the minor or his natural guardian

or any other person on his behalf come and see the guardian his subsequent proceedings and report should conform as far as applicable to sub rule 4 (g to j)

7 The guardian's report mentioned in sub rules 4 and 6 may contain such other facts as he may think necessary to bring to the notice of the Court

8 In petty rent suits and money suit the court shall exercise stricter vigilance before granting leave to the guardian *ad litem* to go to the locality for enquiry

Appeals.

9 The foregoing rules will apply *mutatis mutandis* to the guardians of minor respondents subject to the following rules

10 If no response is made to the registered post card mentioned in Sub rule 1 he should before applying for leave to go to the locality similarly communicate with the pleader who conducted the case in the lower court on behalf of the minor or his predecessor in interest and ascertain from him if possible the probable cause of the non appearance of the minor reporting the result to the Court

11 If the steps taken under the last preceding sub rule does not elicit any satisfactory result the guardian should consult the record and submit a report to the court in which he should state whether in his opinion the judgment and decree of the lower Court can be supported and if such opinion is in the affirmative why he should not argue the case himself before the Court A written note on the merits of the case should accompany report

12 An account estimated to cover the actual travelling and halting expenses of the guardian not exceeding the scale laid down will be required by the court to be deposited by the party at whose instance the guardian is appointed before an order is passed for a local enquiry mentioned in sub rule 3 The amount so deposited or so much of it as may be found due will be to the guardian when he has submitted his report

13 The actual postage charges for communication mentioned in sub rule (1) (2) and (10) will be deposited and paid to the guardian along with the fee prescribed

Travelling allowance The rate of travelling allowance both in the case of an original suit and of an appeal shall be that admissible to a second class officer under the Civil Service Regulation with a daily fee of Rs 4 for the days for which he may be away from the Headquarters (For fees see—Part IV Chapter I)

No 14—Rules framed by the Calcutta High Court about Pleaders and Mukhtears clerks are reproduced below

14. Rules about Pleader's and Mukhtear's clerks *

It is absolutely necessary that the junior practitioners should know the rules on the subject otherwise they may unawares contravene such rules Junior practitioners should be very careful in the selection of their clerks as they have to depend in many matters on the honesty of such clerks For example if a clerk withdraws money and does not pay the amount to the proper person the pleader would be ultimately liable

Following rules framed by the Calcutta High Court in respect of clerks are given below (G L No 12 of 1909) and should be strictly complied with

1 In these rules the expression "recognised clerk" means a clerk employed by a Pleader or Mukhtear and permitted as such to have access to the Courts in which his employer is authorised to practise and to the offices attached thereto

2 Not more than one clerk at a time in the case of a Mukhtear and not more than two clerks in the case of a Pleader shall ordinarily be recognised

3 The District Judge shall maintain a register of all recognised clerks employed in the District and to each recognised clerk shall be given under his orders a card in the form No (M)

*Pleaders are responsible for the misconduct of their clerks in Court works 16 C. L. J 684 16 C. W. N 1091

190 in volume II of the High Court Circular Order These cards which shall be strictly non transferable, shall be recalled for renewal at the close of each year

4. The register prescribed under sub-rule (3) shall contain the name, father's name, and residence of each recognised clerk, the date of his registration the name of the Pleader or the Mukhtear by whom he is employed, the Courts in the District in which his employer is authorised to practise and a column for remarks and copies of it shall be supplied by the District Judge at the commencement of each year to the District Magistrate and to each Sub Divisional office and outlying Munsiff Copies shall also if necessary be furnished to the various Courts at the Sadar station

5 No clerk employed by a Pleader or Mukhtear shall as such be allowed access to any of the Courts of the Districts or to any of the offices attached thereto unless he is for the time being a recognised clerk

6 The District Judge in any case and the District Magistrate in the case of Mukhtear's clerk may for reason to be recorded in writing, and after hearing the clerk in his defence, if he so desire, order the removal from the register of any recognised clerk and the cancellation of his card and on the passing of such order the clerk shall cease to be a recognised clerk Every such order passed by the District Judge shall be communicated to the District Magistrate and *vice versa*, and necessary steps shall be taken for the alteration accordingly of the register and the copies thereof

NB—Proceedings taken against clerks under this sub-rule are administrative and not judicial proceedings

7 No person whose name has been struck off the register shall be recommended for registration by any Pleader or Mukhtear at the same or other station

8 On or before the date on which these rules come in force every Pleader or Mukhtear practising in any of the Courts subordinate to the High Court, other than the Calcutta Small Court shall report to the District Judge the names or

the two clerks or clerk whom he desires to have recognised and the register shall in the first instance be prepared accordingly

9 When submitting his report under sub rule (8) the Pleader or Mukhtear shall certify that the person or persons proposed is or are to the best of his belief fit to be so employed and will be employed *bonafide* in his own service for the purposes of his legal business *No clerk registered as the clerk of one Pleader or Mukhtear shall do business in the Courts or offices thereof on behalf of any other Pleader or Mukhtear*

10 If on the death retirement, or dismissal of any recognised clerk a Pleader or Mukhtear wishes to entertain another clerk in his place he shall apply for his recognition as required by sub rule (8) and the certificate required by the sub rule (9) shall be furnished in regard to all such persons as may be recommended hereafter for recognition [under this rule Nothing in these rules shall be deemed to authorise indiscriminate entry into the offices attached to the Courts or any violation of the order contained in the Government of Bengala Circular 259 J dated the 13th February 1901 which was published in the *Calcutta Gazette* of the 7th of April 1901 Part IV at page 3

B

Re : Rules framed by the Allahabad High Court (U P.)

- No 1 For rules re Pleaders fees—See Part IV ch I
 „ 2 „ „ re witness's expenses—See Part
 X ch III
 „ 3 „ „ re Process fees—See Part X ch III
 „ 4 „ „ re Government servant cited as a
 witness—See Part X chap IV.

No. 5 Rules re : service of summons on defendant serving under Government

In every case where a court sees fit to issue a summons direct to any public servant other than a soldier under Or XVI, simultaneously with the

issue of the summons notice shall be sent to the head of the office in which the person concerned is employed, in order that arrangements may be made for the performance of the duties of such person

Illustration If the Court sees fit to issue a summons to a Kunungo or Patwari it shall inform the Collector of the District, and if to a sub registrar it shall inform the District Registrar to whom the sub registrar is subordinate

No 6 Rules as to filing of addresses by parties in Courts.

Every plaint or original petition shall be accompanied by a proceeding giving an address at which service of notices summons or other process may be made on the plaintiff or petitioner Plaintiffs' petitioners subsequently added shall, immediately on being so added file a proceeding of this nature

An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed or of the District Court within which the party ordinarily resides, if within the limits of United Provinces of Agra and Oudh

Where a plaintiff or petitioner fails to file an address for service he shall be liable to have his suit dismissed or his petition rejected by the Court *suo motu* or any party may apply for an order to that effect, and the Court may make such order as it thinks just

No 6, (a) Rule re effect of service at the registered address

Where a party is not found at the address by him for service and no agent or adult

member of his family on whom a notice or process can be served, is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice or process had been personally served.

No 6 (b)—Rule re : service of notice etc on pleaders of parties.

Where a party engages a pleader, notices or processes for service on him shall be served in the manner prescribed by Or III r. 5, unless the court directs service at the address for service given by the party.

Further rules re : filing of address (Order VIII C P. Code.)

Every party, whether original, added or substituted, who appears in any suit or other proceeding shall, on or before the date fixed in the summons or notice served on him as to the date of hearing file in court a proceeding stating his address for service, and if he fails to do so he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the court may act *suo motu* or on the application of any party for an order to such effect, and the Court may make such order as it thinks just "

No. 7. Non-service of process—rule as to examination of the serving officer.

Where the endorsement is to the effect that such officer is unable to execute the process the court may examine him personally or upon affidavit touching his alleged inability and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result

No. 8 Rule as to execution of decree against immoveable property.

(a) Where an application is made for the sale of land or of any interest in land, the Court shall, before ordering sale thereof, call upon the parties to state whether such land, is or is not ancestral land within the meaning of notification No 1887-1238-10, dated the 7th October, 1911, of the Local Government and shall fix a date for determining the said question

(b) When the property which it is sought to bring to sale is revenue-paying or revenue-free land or any interest in such land, and the decree is not sent to the Collector for execution under S. 68, the Court, before ordering sale shall also call upon the Collector in whose district such property is situate to report whether the property is subject to any (and, if so, to what) outstanding claims on the part of Government

No 9—Rules as to permission to decree-holder to bid at sale.

When permission has been given to a decree-holder to bid for property, the Court ordering the sale shall inform the officer appointed to co

the sale whether there are any persons, in addition to the decree holder, entitled to share in the sale proceeds [In the latter case D H may be directed to purchase the property on payment of cash price]

No 10—Rules as to attachment of live-stock or moveable property

When an application is made for the attachment of live stock or other moveable property, the decree-holder shall pay into Court in cash such sum as will cover the cost of the maintenance and custody of the property for fifteen days. If within three clear days before the expiry of any such period of fifteen days the amount of such costs for such further period as the Court may direct be not paid into Court, the Court, on receiving a report thereof from the proper officer may issue, an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

If the custody of live stock cannot be provided for the animals attached shall be removed to the nearest pound and the pound keeper shall enter in a register —

(a) the number and description of the animals,

(b) the day and hour on and at which they were committed to his custody,

(c) the name of the attaching officer or his subordinate by whom they were committed to his custody, and shall give such attaching officer or subordinate a copy of the entry, and a charge shall be levied according to the scale prescribed.

Animals attached and committed as aforesaid shall not be released from custody by the pound-

keeper except on the written order of the Court, or of the attaching officer. With the permission of the Court the attaching officer may place one or more persons in special charge of such property [See rules 116 to 124]

No 11.—Rules as to appeals from appellate decrees—filing of copies of judgment and decree.

1 Every memorandum of appeal from an appellate decree shall be accompanied by a copy of the decree appealed from and also (unless the court sees fit to dispense with either or both) by a copy of the judgment on which the said decree is founded and of the judgment of the court of first instance

No 12—Rule re: an appeal, a case or a suit dismissed for default

2 In every appeal, in every miscellaneous case and in every suit dismissed for default, a formal order shall be drawn up stating clearly the determination of the appeal or case, the costs incurred, and the parties, if any, by whom such costs are to be paid

No 13.—For rules as to drawing up of affidavits

See Part II (B)

(C)

Abstract of important rules framed by the Madras High Court.

No 1—for rules re Pleader's fees Part II (A).

No 2—for rule fixing scale of expenses allowed to witness—See Part X Chapter IV.

No 3—for rule re citing of a Government servant as a witness—See Part X Chapter IV

No 4—for rule—fixing scales of procees fees see Part X Chapter III

No —5 Rules—Re pleader's authority.

Notwithstanding the termination of all proceedings in the suit so far as regards the client, the appointment of a pleader shall, unless otherwise provided therein or determined by the death of the client or the pleader or by revocation in accordance with the provisions of cl (2) of this rule, be deemed to authorise him to appear or to make an application or to do any act in connection with getting copies of documents and obtaining return of documents produced or filed in the suit or refund of money paid into court in the suit " (To be added to Or III r 4 of C. P C)

No 6—*Rule re examination of serving officer*

Add the following proviso to r 25 (2) —

"Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the General or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this clause "

No 7—*Rule re : Commitment of J D to prison*

No judgment-debtor shall be committed to the civil prison or brought before the court from the prison to which he has been committed pending the consideration of any of the matters that may require to be determined unless and until the decree-holder pays into court such sum as the Judge may think sufficient to meet the travelling and subsistence expenses of the judgment debtor and the escort for the journey to and from the prison

No 8 Rule re • filing of appeals

(See Rule No 1 framed by the Madras High Court)

Add the following as a proviso to Or XLI r 1 (1)

Provided that in appeals from decrees or orders under any special or Local Act to which the provisions of parts II and III of the Limitation Act, IX of 1908 do not apply and in which certified copies of such decrees or orders have not been granted within the time prescribed for preferring an appeal the Appellate Court may admit the memorandum of appeal subject to the production of the copy of the decree or order appealed from within such time as may be fixed by the Court

Add the following to sub rule (2) of Or 41 r 1 —

The memorandum shall also contain a statement of the valuation of the appeal for the purposes of the Court fees Act (vide rule 17)

No 9 —Rule re an appointment of a guardian of a minor party

(Vide Rule No 2 framed by the Madras High Court under Or 32 C P C)

(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for the minor. An order for the appointment of a guardian may be obtained upon application in the name and on behalf of the minor or by the plaintiff

(3) The application for appointing a guardian shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is fit a person to be so

appointed The affidavits shall further state the name of the person or persons on whom notice has to be served

(4) No order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf or, where there is no guardian, upon notice to the father or other natural guardian of the minor or where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing objections, if any, raised by a person served with notice

The notice shall be served six clear days before the day named in the notice for the hearing of the application

(5) Where a minor has a guardian appointed or declared by competent authority, no person other than the guardian shall act as the next friend of the minor or be ordinarily appointed as guardian for the suit, unless the Court for reasons to be recorded in writing, orders otherwise No person shall without his consent be appointed guardian of a minor for the suit

(6) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be guardian

Costs

When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the defendant and that the defendant will be prejudiced in his defence thereby, the Court may, from time to time, order the plaintiff to advance

money to the guardian for the purpose of his defence and all money so advanced shall form part of the costs of the plaintiff in the suit

No 9(a) Rule re : Compromise on behalf of a minor or a person under disability

The pleader filing the petition of compromise shall file along with that a certificate to the effect that the compromise or agreement or the action proposed to be taken is in his opinion for the benefit of the minor

No 10 Rule re : Appointment of a Commissioner for translation work

(1) The Court may in any suit issue a commission to such persons as it thinks fit to translate accounts and other documents which are not in the language of the Court

(2) The report of the commission shall be evidence in the suit and shall form part of the record

(3) Before issuing any Commissioner under this order, the Court may order such sum (if any) as it thinks reasonable for the expense of the commission to be within a time to be fixed paid into Court by the party at whose instance or for whose benefit the commission is issued

No 11 Rule re : attachment of decree sent to another Court for execution

Add the following as sub rule 1 (c) to Or XXI r 53

'If the decree sought to be attached has been sent for execution to another Court, the Court which passed the decree shall send a copy of the said notice to the former Court and thereupon the provisions of cl (b) shall apply in the same manner

as if the former Court had passed the decree and the said notice had been sent to it by the Court which issued it "

No 12 Rule re : attachment of moveables *

(1) Where the property to be attached is moveable property, other than agricultural produce, in the possession of the Judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof

Provided that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once, and provided also that when the property attached consists of live-stock, agricultural implements, or other articles which cannot conveniently be removed and the attaching officer does not act under the first proviso to this rule, he may at the instance of the judgment-debtor or if the decree holder or of any person claiming to be interested in such property leave it in the village or place where it has been attached—

(a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond with one or more sufficient sureties for its production when called for or

(b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided and

* Or XXI R 43 has been replaced by these rules

the remuneration of the officer for a period of fifteen days at such rate as may from time to time be fixed by the High Court be paid in advance

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in r 55 or r 57 or r 60 of this order the court may order the restitution of the attached property to the person in whose possession it was before attachment

Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the court and shall with his report forward a list of the property seized

If attached property is not sold under the first proviso to r 3 or retained in the village or place where it is attached under the second proviso to that rule, it should be brought to the Court-house and delivered to the proper officer of the Court

No 12 —(a) Rule re : attachment of live stock

(1) Whenever attached property kept in the village or place where it is attached is live stock, the person at whose instance it is so retained shall provide for its maintenance, and if he fails to do so and if it is in charge of an officer of the Court, it shall be removed to the Court-house

Nothing in this rule shall prevent the judgment-debtor or any person claiming to be interested in such stock, from making such arrangements for feeding the same as may not be inconsistent with its safe custody

(2) The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid

recovered from the proceeds of property, if sold, or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings "

(D)

Abstract of rules framed by the Patna High Court

No 1—For rules re Pleadings' fees see Part IV Chapter I.

No 2—For rules fixing scales of process fees, see Part X Chapter III

No 3—*Rules regarding citing of Government servant as a witness framed under section 122 of the Civil Procedure Code have been reproduced in Part X Chapter IV*

(E)

Abstract of important rules framed by the Rangoon High Court.

No 1—For rule re —citing of Government servants as witness See Part X Chapter IV.

No 2—For rule re —expenses to be allowed to witnesses See Part X Chapter VI

No 3—For rules regarding affidavits—See Part II (B)

No 4—*Rule re Commission to be paid to Bailiff on sale*

Fees are as follows —

(a) When the proceeds of sale do not exceed Rs 500—5 per cent

(b) When over Rs 500 and up to Rs 5000—5 p c on first Rs 500 and 2 p c on the remainder

(c) When over Rs 5000—at the rate of (b) up to Rs 5000 and 1 p c on remainder.

N B.—When a sale of immoveable property is set aside under the provisions of rule 92 (2)—no commission shall be paid to the Bailiff for selling the property

No 5—Rule re *Fee of Commissioners for local investigation and Commissioners of partition, or to take accounts, or for the examination of witnesses**

1 Civil Courts in issuing Commissions will be guided by the provisions of r 15, and subject to the provisions of r 23 will exercise their own judgment in fixing a reasonable sum for the expenses of the Commission

2 Under Government of India Resolution in the Home Department (Judicial No 10—1101, dated the 21st July 1875),

Judicial Officers are prohibited from accepting any remuneration for executing Commissions issued by Courts of other provinces

3 It is to be understood that no part of the fee sent for the execution of a Commission is to be accepted either personally or on behalf of Government. The execution of a Commission is an official act which Judicial officers are bound to perform when called upon and is not work undertaken for a private body

4 In all cases the unexpended balance which, remains after all charges have been deducted, should be returned to the Court issuing the Commission

* To be added to rules 19 to 26 of Or XXVI C P C

5 The following fees are to be allowed to Commissioners of partition or to take accounts or for examination of witnesses, namely —

Commissioner's fee for every effective meeting shall not exceed three gold mohurs for the first two hours and one gold mohur for each succeeding hour.

No. 6.—Rule re : Fees to Commissioner for administering an oath or solemn affirmation to a declarant of an affidavit elsewhere than at the Court

(1) where the Commissioner goes outside the Court for the above purpose—he will get a fee of Rs. 16 for his work

(2) if more than one affidavit is taken at the same time and place—the fee shall be Rs 8 for each after the first

(3) in no case shall the fees for taking any number of affidavits at the same time and place affidavit exceed Rs 80 ,

No. 7.—Rule re : filing of appeals

To Order XLI. r. 1 the following shall be added as sub-rule (3) —

"The appellant shall present, along with the petition of appeal, as many copies on plain paper of the grounds of appeal as there are respondents"

No 8 —Rule re : sale of immoveable property.

"If in execution of a decree any interest in land is sold the names and addresses of the purchaser or purchasers and the interest thereby acquired shall be certified to the Superintendent of land records as soon as the sale has been confirmed under r 92 (1)"

**No 9—Rule re : satisfaction of a mortgage.
(Redemption suit.)**

When the plaintiff pays into Court the amount due within the period allowed the Court shall pass a decree

(a) ordering the defendant to deliver up the document which under the terms of the Preliminary decree he is bound to deliver up ,

and if so required—

(b) ordering him to transfer the mortgaged property as directed in the Preliminary decree

and also if necessary,—

(c) ordering him to put the plaintiff in possession of the property

(F)

**Abstract of rules framed by the Lahore
High Court (Punjab)**

**No 1 —Rule re appointment of a guardian
of a minor defendant**

(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority shall appoint a proper person to be guardian for the suit for such minor

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed

(4) No order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent on that behalf, or where there is no such guardian, upon notice to the father or other natural guardian of the minor or, where there is no father or other natural guardian of the minor, to the person in whose care the minor is, and after hearing any objection that may be urged on behalf of any person served with notice under this sub-rule

No 2—Rule re attachment and sale of standing crops

Or XXI, r 75 (2) —where the crop from its nature does not admit of being stored, or can be sold to greater advantage in an unripe state, such as green wheat or gram, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land and to do all that is necessary for the purpose of tending and cutting or gathering it

No 3—Rule re : verification of pleading and suit by partners

Or XXX, r 1 of the C P Code—(1) Any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the court may direct

(2) Where persons sue or are sued as partners in the name of their firm under Sub r (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, and verified or certified by any one of such persons

No 4—Rule re : appellate court decrees
Or XLI, r 25

(1) The decree shall contain the number of the appeal, the names and description of the appellant and respondent and a clear specification of the relief granted or other adjudication made

(2) The decree shall also state the amount of costs incurred in the appeal, and by whom or out of what property and in what proportions such costs and the costs in the suit are to be paid

The decree shall be signed and dated by the Judge or Judges who passed it

(3) Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the court to sign the decree

No 5—Rule re : citing of witnesses (See Part X Chapter IV)

No 6—Rule re : suit by a minor

Order XXX II, r 1—'Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor'

No 7—Rule re service of summons by post

Add to Or, V r. 10.

'Provided that in any case if the Court wishes the Court may serve the summons

first instance by registered post instead of in the mode of service laid down in this rule ; and provided always that should the defendant not appear in answer to the summons so issued, the Court shall have service effected in accordance with the provisions of this order."

Abstract of rules framed by the Bombay High Court.

No. 1—Rule re : service of summons by Post

"Service of summons by post is allowed to litigants as a matter of convenience. The Court should allow the defendant a retrial, if after, the decree has been passed against him on evidence that the summons was sent to him by registered post and returned refused, he appears and denies that the packet has ever been delivered to him by the postal authorities." (Vide 23 Bom. L. R. 908 and the rule framed by the Bombay High Court under Or. 5 r. 22.)

No. 2. Rule re : payment of costs to Government servants cited to give evidence in his official capacity. Add the following as a proviso to R. 3 Order XVI of the C. P. Code.

"*Provided that where witness is a public officer to whom the Civil Service regulations apply and is summoned to give evidence of facts which have come to his notice or of facts with which he has had to deal in his official capacity, or to produce a document from public records the sum payable by the party obtaining the summons on account of his travelling and other expenses shall not be tendered to him.*" (See also Part X Chapter IV.)

No 3—Rule re : attachment of agricultural Produce.

When the property to be attached is agricultural produce, a copy of the warrant or order of attachment

shall be sent by post to the office of the Collector of the District in which the land is situate

No 4—Rule re filing of appeals

Add to Or XLI, r 3 'Where an appellant applies for delay to be excused, notice to show cause shall at once be issued to the respondent and the matter shall be finally decided before notice is issued to the court from whose decree the appeal is preferred under r 13''

No 5 Rule Re—Scale of Process fees—See Part X Chapter III

No 7—Bombay rule—re: Service of Summons

In cases under first Schedule I Order v r 16 and 17 Civil Procedure Code (Act V of 1908), the officer who serves the summons or notice on a defendant or respondent should immediately on his return, make an affidavit before the proper officer as to the service of the summons or notice for use in case it becomes necessary under Or IX r 6 to prove that the summons or notice was duly served and in case the Court considers under Or XIX, r 1 of the Code, that there is sufficient reason for ordering the fact of service to be proved by affidavit No bailiff charged with the service of a process is entitled to call upon the party interested in the service to point out the person served

It is the duty of the bailiff to use his best efforts to effect the service and it is only when he fails, inspite of such efforts, that the Court may order the party to render help to him

N B—In cases where the serving officer does not know the individual on whom the process is to be served but such individual is pointed out to him,

there should be a verification of the endorsement on the process by the bailiff and also by the person who points out the individual served. H. C. Sup. Civ. Cir. No. 56 ; Bom. G. G. 1908 Pt. I., p. 619.

Rules in the Central Provinces.

No. 1—for rules regarding Process fees—See Part X Chapter III—See Gazette of India, dated 27-9-1913 Part III pages 1767—99.

No. 2—Rule re : Service of Process-Server.

Ordinarily process-servers should travel on foot when proceeding to serve or execute processes in special cases, the Judge of the Court issuing the process may permit the journey to be made by Railway. In such cases the permission should be in writing and the railway fare should be paid from judicial contingencies and not be charged from the person at whose instance the process is issued. (Vide Gazette of India, dated 27-9-1913, Part II, pp. 1797-99.)

THE
Civil Court Practice and Procedure.

APPENDIX C.

CHAPTER VII.

THE
CHRONOLOGICAL TABLES
CONTAINING

The English and the Corresponding Indian Dates
OF
FIFTEEN YEARS
FROM
1913 to 1927
FOR

Easy reference while dealing with documents
containing Indian dates

APPENDIX II.

The Chronological Table.

Utility of the Chronological tables.

It generally happens that documents written in the Indian Vernacular languages bear Indian dates, and the pleader has to find out the corresponding English dates in order to compute the period of limitation which is calculated according to the Gregorian Calendar

In the accompanying tables the English dates corresponding to the Indian dates have been given, and it is hoped that the members of the profession for whom the book is meant will be saved the trouble of consulting a separate book of chronological tables, while drafting a plaint with the help of this book, unless the document on which the suit is based is too old and limitation has been saved by payments

Chronological Table.

INSTRUCTIONS FOR USING THE TABLE,

IN this Chapter have been given comparative tables of dates of the English, Bengali, Fushi, Sambat and Hijri (Mussulman) years. Other years can be calculated as follows —

Mulki —Add one to Bengali year.

Bhelaity or Amlit—Same as Fushi (date 11 to 21 days behind the Fushi date) [See Note in the tables]

Tipperah—Add three years to Bengali year

Mughee—Deduct 45 from the Bengali year

Sambat or Saka or Sakabda—Add 515 to Bengali year.

Burmese—Add one to Sakabda.

N B —In this book only the 1st and 15th of every English month and their corresponding Indian dates have been given. Find out the calendar of the corresponding months of Indian years from the following tables and then compare them and get the exact dates. *For illustrations see after*

I.—CHART OF THE—*Month beginning on Sunday*

SUNDAY	1	8	15	22	29
MONDAY	2	9	16	23	30
TUESDAY	3	10	17	24	31
WEDNESDAY	4	11	18	25	
THURSDAY	5	12	19	26	
FRIDAY	6	13	20	27	
SATURDAY	7	14	21	28	

II—CHART OF THE—*Month beginning on Monday*

SUNDAY		7	14	21	28
MONDAY	1	8	15	22	29
TUESDAY	2	9	16	23	30
WEDNESDAY	3	10	17	24	31
THURSDAY	4	11	18	25	
FRIDAY	5	12	19	26	
SATURDAY	6	13	20	27	

III —CHART OF THE—*Month beginning on Tuesday*

SUNDAY		6	13	20	27
MONDAY		7	14	21	28
TUESDAY	1	8	15	22	29
WEDNESDAY	2	9	16	23	30
THURSDAY	3	10	17	24	31
FRIDAY	4	11	18	25	
SATURDAY	5	12	19	26	

IV —CHART OF THE—*Month beginning on Wednesday*

SUNDAY		5	12	19	26
MONDAY		6	13	20	27
TUESDAY		7	14	21	28
WEDNESDAY	1	8	15	22	29
THURSDAY	2	9	16	23	30
FRIDAY	3	10	17	24	31
SATURDAY	4	11	18	25	

V.—CHART OF THE—*Month beginning on Thursday*

SUNDAY		4	11	18	25
MONDAY		5	12	19	26
TUESDAY		6	13	20	27
WEDNESDAY		7	14	21	28
THURSDAY	1	8	15	22	29
FRIDAY	2	9	16	23	30
SATURDAY	3	10	17	24	31

VI—CHART OF THE—*Month beginning on Friday*

SUNDAY		3	10	17	24	31
MONDAY		4	11	18	25	
TUESDAY		5	12	19	26	
WEDNESDAY		6	13	20	27	
THURSDAY		7	14	21	28	
FRIDAY	1	8	15	22	29	
SATURDAY	2	9	16	23	30	

VII—CHART OF THE—*Month beginning on Saturday*

SUNDAY		2	9	16	23	30
MONDAY		3	10	17	24	31
TUESDAY		4	11	18	25	
WEDNESDAY		5	12	19	26	
THURSDAY		6	13	20	27	
FRIDAY		7	14	21	28	
SATURDAY	1	8	15	22	29	

Illustrations for using the Chart.

Seven different *Charts* have been given, showing the months beginning on a Sunday Monday, Tuesday, Wednesday, Friday and Saturday By a mere glance at these *Charts* one can see how a month beginning on a particular day of the week runs These *Charts* will be of much help in consulting the Calendar.

Example

In the Bengali year, 1322, corresponding with the English year 1916, the 1st of March falls on a Wednesday. You have a document bearing the date *20th of Falgoon 1322* and you are to find out at a glance the corresponding English date and the day In the table you find thus

Tuesday { 1st March 1916—18th of Falgoon 1322
 { 15th March 1916—2nd of Chyt. 1322.

Deduct 18 from 25=7 Add 7 to 18th and 1st and you get—25 Falgoon=8th March

How to find the day

By referring to the 7 tables you see that Table I is the month of which 18th falls on Wednesday so table I is Calendar of the month of Falgoon 1322 and you can get all dates of Falgoon 1322 from this table In this way you get from Table I that 25th of Falgoon was a *Wednesday*

Similarly from table IV you get Calendar of March 1916—comparing both tables you get that 25 Falgoon 1320=8th of March 1916=Wednesday

Another Example

Find out the corresponding English date for—
1st Pous 13 5 —

Year—From the table you get that 17th Pous 1325=1st January 1919 (Wednesday) So the required year would be 1918

Month—It is evident that the month would be **December**

Date—17th Pous=1st January We want the date for 12th Pous, so we must count back wards for 5 days This gives us the date to be the **27th December**

Day—This is very easy from table II we find that this is the table for the month of which 17th falls on Wednesday—so from this table we get that 12th of Pous was a *Friday*

Answer—12 Pous 1325 Friday 27th December 1918.



CHRONOLOGICAL TABLE

[688]

English year	Bengal year	Farsi year	Musliman year (Hijri)	Sambat or Hindis year	Note.
1913.	1319	1320	1331	1969	
Wed. { 1st January	17 Pous	8 Pous	22 Moharrum	9 Pous B	
15th January	2 Magh	22 Pous	6 Sufer	8 Pous S	
Sat. { 1st February	19 Magh	10 Magh	23 Sufer	11 Magh B	
15th February	3 Phalgun	24 Magh	8 Rub-ool-A	9 Magh B	
Sat. { 1st March	17 Phalgun	8 Phalgun	22 Rub-ool A	9 Phalgun B	
15th March	2 Chyt	22 Phalgun	6 Rub-ool S	7 Phalgun S	
Tues { 1st April	19 Chyt	10 Chyt	23 Rub-ool-S	10 Chyt B.	
15th April	2 Bysakh	24 Chyt	7 Jum-ool A	9 Chyt S	
Thurs { 1st May	18 Bysakh	11 Bysakh	23 Jum-ool-A	10 Bakh B	
15th May	1 Jhyat	25 Bysakh	8 Jum-ool-S	10 Bakh S	
1st June	18 Jhyat	12 Jhyat	25 Jum-ool-S	12 Jhyt S	
15th June	1 Aavar	26 Jhyt	9 Rujub	12 Jhyt S	

For *Bhelaity* or *Amis* year and date—add one to Bengal year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE.

[894]

English year	Bengali year	Farsi year	Musulman year (Hizri)	Sambat or Hindi year	Note
1913	1320	1320	1331	1970	For <i>Bhaktity</i> or <i>Amiya</i> year add date—add one to Ben- gali year and generally one to Bengali date respectively
Tues { 1st July	17 Astar	13 Astar	25 Rujub	12 Astar B	
15th July	31 Astar	27 Astar	10 Shaban	12 Astar S.	
Fr { 1st August	16 Sraban	14 Sraban	27 Shaban	14 Sraban B	
15th August	30 Sraban	28 Sraban	11 Rumzan	14 Sraban S	
Mon. { 1st September	16 Bhadra 1321	16 Bhadra	22 Rumzan	1 Bhadra S.	
15th September	30 Bhadra	30 Bhadra	13 Shuwal	15 Bahad a S	
Wed { 1st October	15 Assin	16 Assin	29 Shuwal	1 Assin S	
15th October	29 Assin	30 Assin	14 Zilkandeh	15 Assin S	
Sat { 1st November	15 Kartick	17 Kartick	1 Zilhijeh	3 Kartick S	
15th November	29 Kartick	2 Aghran	15 Zilhijeh 1332	2 Aghran B	
Mon { 1st December	15 Aghran	18 Aghran	2 Mohurrum	4 Aghran S	
15th December	29 Aghran	2 Poush	16 Mohurrum	2 Poush B	

CHRONOLOGICAL TABLE

[895]

Engl sh year	Bengali year	Foolis year	Musulman year (Hijri)	Sambat or Hindi year	Note
1914	1320	1321	1332	1970	
Thurs { 1st January	17 Pous	19 Pous	3 Sufer	5 Pous S	
Sun { 15th January	2 Megh	3 Megh	17 Sufer	4 Megh B	
Sun { 1st February	19 Megh	20 Megh	4 Rub ool A	6 Megh S	
Sun { 15th February	3 Phalgun	5 Phalgun	18 Rub ool A	5 P. algon B	
Sun { 1st March	17 Phalgun	19 Phalgun	3 Rub ool S	4 Phalgon S	
Sun { 15th March	1 Chyt	3 Chyt	17 Rub ool S	4 Chyt B	
Wed { 1st April	18 Chyt	20 Chyt	4 Jum ool A	5 Chyt S	
Wed { 15th April	2 Bysakh	5 Bysakh	18 Jum ool A	4 Bykh B	
Fri { 1st May	18 Bysakh	21 Bysakh	4 Jum ool S	6 Bykh S	
Fri { 15th May	1 Jhyt	6 Jhyt	18 Jum ool S	5 Jhyt B	
Mon { 1st June	18 Jhyt	23 Jhyt	6 Rajab	5 Jhyt S	
Mon { 15th June	1 Assar	7 Assar	20 Rajab	7 As ar B	

For Bhelaity or Amls year and date—add one to Ben
gali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE.

[968]

English year	Bengali year	Fush year	Musulman year (Hizri)	Sambat or Hindi year	Note
1914	1321	1321	1322	1971	
Wed { 1st July	17 Assar	23 Assar	6 Shaban	8 Assar S	
15th July	31 Assar	8 Sraban	20 Shaban	7 Sraban B	
Sat { 1st August	16 Sraban	25 Sraban	8 Rumzan	10 Sraban S	
15th August	30 Sraban	9 Bhadra	22 Rumzan	9 Bhadra B	
Tue { 1st September	15 Bhadra	26 Bhadra	10 Shuwal	12 Bahdra S	
15th September	29 Bhadra	11 Assin 1322	24 Shuwal	10 Assin B	
Thurs { 1st October	14 Assin	27 Assin	10 Zilkaidch	12 Assin S	
15th October	28 Assin	11 Kartick	24 Zilkaidch	11 Kartick B	
Sun { 1st November	15 Kartick	28 Kartick	12 Zilhijch	14 Kartick S	
15th November	29 Kartick	13 Aghran	26 Zilhijch 1333	13 Aghran B	
Tue { 1st December	15 Aghran	29 Aghran	12 Mohurram	14 Aghran S	
15th December	29 Aghran	13 Pous	26 Mohurram	13 Pous B	

For *Bheality* or *Amit* year and date—add one to Bengali year and generally one to Bengali date respectively.

CHRONOLOGICAL TABLE

[897]

English year	Bengali year	Farsi year	Muslim year (Hijri)	Sambal or Hindu year	Note
1915	1321	1322	1332	1977	
<div> <div> Fri. </div> <div> 1st January </div> </div>	17 Pous	30 Pous	14 Sufer	15 Pous S	
<div> <div> 15th January </div> </div>	1 Magh	14 Magh	28 Sufer	14 Magh B	
<div> <div> 1st February </div> </div>	18 Magh	1 Phalgun	15 Rub ool A	1 Phalgun B	
<div> <div> 15th February </div> </div>	3 Phalgun	15 Phalgun	29 Rub-ool A	1 Phalgun S	
<div> <div> 1st March </div> </div>	17 Phalgun	29 Phalgun	14 Rub oos S	15 Phalgun S	
<div> <div> 15th March </div> </div>	1 Chyt	14 Chyt	28 Rub oos S	14 Chyt B	
<div> <div> 1st April </div> </div>	18 Chyt 1332	1 Byasakh I	15 Jum ool A	1 Bykh I B	
<div> <div> 15th April </div> </div>	2 Byasakh	15 Byasakh I	29 Jum ool A	15 Bykh I S	
<div> <div> 1st May </div> </div>	18 Byasakh	2 Byasakh II	15 Jum oos S	2 Bykh II B	
<div> <div> 15th May </div> </div>	1 Jhyt	16 Byasakh II	29 Jum oos S	1 Bykh II S	
<div> <div> 1st June </div> </div>	18 Jhyt	4 Jhyt	16 Rujub	4 Jhyt B	
<div> <div> 15th June </div> </div>	32 Jhyt	18 Jhyt	1 Shaban	3 Jhyt S	

For Bhelaity or Amli year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

[898]

English year	Bengali year	Farsi year	Muslim year (Hijri)	Sambat or Hindi year	Note
1915,	1322.	1322	1333	1972.	For <i>Bhela</i> or <i>Amis</i> year and date—add one to Ben gali year and generally one to Bengali date respectively
Thurs { 1st July	16 Asar	4 Asar	17 Shaban	5 Asar B	
15th July	30 Asar	18 Asar	1 Ramzan	3 Asar S	
Sun { 1st August	16 Sraban	6 Sraban	18 Rumzan	6 Sraban B	
15th August	30 Sraban	20 Sraban	3 Shuwal	5 Sraban S	
Wed. { 1st September	15 Bhadra	8 Bhadra	20 Shuwal	8 Bhadra B	
15th September	29 Bhadra	22 Bahadra 1323	4 Zilkadeh	6 Bhadra S	
Fr { 1st October	14 Asvin	8 Asvin	20 Zilkadeh	8 Asvin B	
15th October	28 Asvin	22 Asvin	5 Zilkadeh	7 Asvin S	
Mon. { 1st November	15 Kartick	10 Kartick	22 Zilhijeh 1334	9 Kartick B	
15th November	29 Kartick	24 Kartick	7 Mol urrum	8 Kartick S	
Wed { 1st December	15 Aghran	10 Aghran	23 Mohurram	9 Aghran B	
15th December	29 Aghran	24 Aghran	7 Sufer	9 Aghran S	

CHRONOLOGICAL TABLE

[689]

English year	Bengali year	Fasil year	Musulman year (Hijri)	Sambat or Hindu year	Note
1916	1322	1323	1334	1972	
Sat { 1st January	16 Pous	11 Pous	24 Sufer	11 Pous B	
15th January	1 Magh	25 Pous	9 Rub ool A	10 Pous S	
Tues. { 1st February	18 Magh	12 Magh	26 Rub ool A	12 Magh B	
15th February	3 Falgoon	26 Magh	10 Rub oos S	11 Magh S	
1st March	18 Falgoon	11 Falgoon	25 Rub oos S	10 Phalagoon B	
15th March	2 Chyt	25 Falgoon	10 Jum ool A	11 Phalagoon S	
Sat { 1st April	19 Chyt 1323	13 Chyt	27 Jum ool A	14 Chyt B 1973	
15th April	2 Bysakh	27 Chyt	11 Jum oos S	13 Chyt S	
1st May	18 Bysakh	13 Bysakh	27 Jum oos S	14 Bykh B	
15th May	2 Jhyat	27 Bysakh	11 Rajub	13 Bykh S	
1st June	19 Jhyat	15 Jhyat	28 Rajub	1 Jhyt B	
Thurs { 15th June	1 Assar	29 Jhyat	13 Shaban	14 Jhyt S	

For *Bhelaity* or *Amle* year and date—add one to Ben-
gali year and generally one to Bengali date—add one to Ben-

CHRONOLOGICAL TABLE

[906]

English year	Bengali year	Farsi year	Musliman year (Hijri)	Sambat or Hindi year	Note
1916	1323	1323	1334	1973	For <i>Bhelaity</i> or <i>Armit</i> year and date—add one to Ben- gali year and generally one to Bengali date respectively.
Sal. { 1st July	17 Astar	16 Astar	29 Shaban	1 Astar S	
{ 15th July	31 Astar	30 Astar	13 Rumzan	15 Astar S	
Tues { 1st August	16 Sraban	17 Sraban	30 Rumzan	2 Sraban S	
{ 15th August	30 Sraban	2 Bhadra	14 Shuwal	2 Bhadra B	
{ 1st September	16 Bhadra	19 Bhadra	2 Zilkandeh	4 Bhadra S	
{ 15th September	30 Bhadra	4 Assin	16 Zilkandeh	4 Assin B	
{ 1st October	15 Assin	20 Assin	2 Zilhjeh	4 Assin S	
Sun. { 15th October	29 Assin	4 Kartick	16 Zilhjeh	4 Kartick B	
{ 1st November	15 Kartick	21 Kartick	4 Moharrum	6 Kartick S	
{ 15th November	29 Kartick	6 Aghran	18 Moharrum	6 Aghran B	
{ 1st December	16 Aghran	22 Aghran	4 Sufer	7 Aghran S	
{ 15th December	30 Aghran	6 Pous	18 Sufer	6 Pous B	

CHRONOLOGICAL TABLE

1 901 1

English Year	Bengali Year	Farsi Year	Musliman Year (Hijri)	Sambat or Hindi Year	Note
1917	1323	1324	1335	1973	
Mon { 1st January	17 Pous	23 Pous	6 Rub ool A	8 Pous S	
15th January	2 Magh	7 Magh	20 Rub ool A	7 Magh B	
Thurs { 1st February	19 Magh	24 Magh	8 Rub oos S	10 Magh S	
15th February	3 Falgoon	8 Falgoon	22 Rub oos S	8 Phalgoon B	
Thurs { 1st March	17 Falgoon	22 Falgoon	6 Jum ool A	8 Phalgoon S	
15th March	2 Chyt	7 Chyt	20 Jum ool A	7 Chyt B	
Sun { 1st April	19 Chyt	24 Chyt	8 Jum oos S	9 Chyt S	
15th April	2 Bysakh	8 Bysakh	22 Jum oos S	8 Bykh B	
Tues. { 1st May	18 Bysakh	24 Bysakh	8 Rojub	10 Bykh S	
15th May	1 Jhyt	8 Jhyt	22 Rojub	9 Jhyt B	
1st June	18 Jhyt	25 Jhyt	10 Shaban	11 Jhyt S	
15th June	1 Ashar	10 Assar	24 Shaban	11 Assar B	

For *Rhelaity* or *Amis* year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE.

English Year	Bengali Year	Fuli Year	Masulman Year (Hizri)	Sambat or Hindi Year	Note
1917	1324	1324	1335	1974	
Sun. { 1st July	17 Assar	26 Assar	10 Rumzan	11 Assar S	
15th July	31 Assar	11 Sraban	24 Rumzan	12 Sraban B	
Wed { 1st August	16 Sraban	28 Sraban	11 Shuwal	13 Sraban S	
15th August	30 Sraban	12 Bhadra I	25 Shuwal	13 Bhadra B I	
Sat. { 1st September	16 Bhadra	29 Bhadra 1st	13 Zilkaidh	15 Bhadra S I	
15th September	30 Bhadra	14 Bhadra II	27 Zilkaidh	14 Bhadra B II	
Mon. { 1st October	15 Assin	1 Assin	13 Zilhijeh	1 Assin B	
15th October	29 Assin	15 Assin	27 Zilhijeh	15 Assin S	
Thurs { 1st November	15 Kartick	2 Kartick	15 Mohurrum	2 Kartick B	
15th November	29 Kartick	16 Kartick	29 Mohurrum	1 Kartick S	
Sat. { 1st December	15 Aghran	3 Aghran	15 Sufer	3 Aghran B	
15th December	29 Aghran	17 Aghran	29 Sufer	1 Aghran S	

For *Bhelaity* or *Amli* year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

English Year	Bengali Year	Fush Year	Muhammadan Year (Hizri)	Sambat or Hindu Year	Note
1918	1324	1325	1336	1974	For <i>Bhelaity</i> or <i>Amile</i> year and date—add one to Bengali year and generally one to Bengali date respectively
Tues { 1st January	17 Pous	4 Pous	16 Rub ul A	4 Pous B	
25th January	2 Magh	16 Pous	1 Rub us S	3 Pous S	
Fri { 1st February	19 Magh	5 Magh	18 Rub us S	5 Magh B	
15th February	3 Phalgun	19 Magh	3 Jamoo ul A	5 Magh S	
Fri { 1st March	17 Phalgun	4 Phalgun	17 Jamoo ul A	3 Phalgun B	
15th March	1 Chyt	18 Phalgun	1 Jam us S	3 Phalgun S	
Mon. { 1st April	18 Chyt	5 Chyt	18 Jam us S	5 Chyt B	
15th April	2 Bysakh	19 Chyt	3 Rujjub	5 Chyt S	
Wed. { 1st May	16 Bysakh	5 Bysakh	19 Rujjub	5 Bysakh B	
15th May	1 Jhyst	19 Bysakh	3 Shaban	5 Bysakh S	
1st June	18 Jhyst	7 Jhyst	20 Shaban	7 Jhyst B	
Sat { 15th June	1 Assar	21 Jhyst	5 Ramzan	7 Jhyst S	

CHRONOLOGICAL TABLE

[904]

English Year	Bengali Year	Fusti Year	Mussulman Year (Hizri)	Sambat or Hindi Year	Note
1918	1325	1325	1336	1975	For <i>Bhettali</i> or <i>Amit</i> year and date—add one to Bengali year and generally one to Bengali date respectively
{ Mon.	17 Astar	7 Astar	21 Ramzan	8 Astar B	
	15th July	21 Astar	6 Showal	7 Astar S	
{ Thurs	1st August	9 Sraban	23 Showal	9 Sraban B	
	15th August	23 Sraban	7 Zilkaid	8 Sraban S	
{ Sun.	1st September	10 Bhadra	24 Zilkaid	11 Bhadra B	
	15th September	24 Bhadra	8 Zilhijja	10 Bhadra S	
{ Tues	1st October	11 Aashu	24 Zilhijja	12 Aashu B	
	15th October	25 Aashu	9 Muhurram	10 Aashu S	
{ Fri	1st November	13 Kartick	26 Muhurram	13 Kartick B	
	15th November	27 Kartick	10 Suffer	12 Kartick S	
{ Sun.	1st December	13 Aghran	26 Suffer	13 Aghran B	
	15th December	27 Aghran	10 Rub ul A	13 Aghran S.	

CHRONOLOGICAL TABLE.

[505]

English Year	Bengali Year.	Fush Year	Musulman Year (Hizri)	Sambal or Hindi Year	Note
1919.	1325	1326	1237	1975.	
Wed { 1st January	17 Pous	15 Pous	27 Rab-ul A	14 Pous B.	
{ 15th January	1 Magh	29 Magh	12 Rab-us-S	14 Pous S	
Sat { 1st February	18 Magh	16 Magh	29 Rab-us-S	1 Magh S	
{ 75th February	3 Phalgun	1 Phalgun	13 Jam ul A	1 Phalgun B	
Sat { 1st March	17 Phalgun	15 Phalgun	27 Jam-ul-A	14 Phalgun B.	
{ 16th March	1 Chyt	29 Phalgun	11 Jam us S	14 Phalgun S	
Tues { 1st April	18 Chyt	16 Chyt	28 Jam-us-S	1 Chyt S	
{ 15th April	2 Bysakh	30 Chyt	13 Rejjab	15 Chyt S	
Thurs { 1 May	18 Bysakh	16 Bysakh	29 Rejjab	1 Bysakh S.	
{ 15th May	1 Jhyst	30 Bysakh	14 Shaban	1 Jhyst B.	
un. { 1st June	18 Jhyst	17 Jhyst	1 Ramzan	3 Jhyst S.	
{ 15th June	32 Jhyst	2 Astar	15 Ramzan	2 Astar B	

For Bhehag or 4th year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

[906]

English Year	Bengali Year	Farsi Year	Mussulman Year (Hizri)	Sambat or Hindi Year	Note
1919	1326	1326	1337	1976	For <i>Libelaty</i> or <i>Amis</i> year and date—add one to Bengali year and generally one to Bengali date respectively
Tues. { 1st July	16 Asar	18 Asar	2 Showal	4 Asar S	
15th July	30 Asar	2 Sraban	16 Showal	2 Sraban B	
1st August	16 Sraban	19 S aban	4 Zilquada	5 Sraban S	
15th August	30 Sraban	4 Bhadra	18 Zilquada	4 Bhadra B	
1st September	15 Bhadra	21 Bhadra	5 Jelhizza	7 Bhad a S	
15th September	29 Bhadra	5 Asvin	19 Jelhizza	6 Asvin B	
1st October	14 Asvin	21 Asvin	6 Muhuram	7 Asvin S	
15th October	28 Asvin	6 Kartick	20 Muhuram	7 Kartick B	
1st November	15 Kart ck	23 Kartick	7 Suffer	8 Kartick S	
15th November	29 Kartick	8 Aghran	21 Suffer	8 Aghran B	
1st December	15 Aghran	24 Aghran	7 Rabi ul A	9 Aghran S	
15th December	29 Aghran	8 Pous	21 Rabi ul A	9 Pous B	

CHRONOLOGICAL TABLE.

English Year	Bengali Year	Fuli Year.	Musliman Year (Hizri)	Sambat or Hindu Year	Note.
1920	1326	1327	1338	1976	
Thurs { 1st January	16 Pous	25 Pous	8 Rub us S	10 Pous S	
15th January	1 Magh	10 Magh	22 Rub us-S	10 Magh B	
Sun { 1st February	18 Magh	27 Magh	10 Jamdo ol A	12 Magh S	
15th February	3 Phalgun	11 Phalgun	24 Jamdo ol A	11 Phalgun B	
Mon { 1st March	18 Phalgun	26 Phalgun	9 Jam oos-S	11 Phalgun S	
15th March	2 Chyt	11 Chyt	23 Jam oos S	10 Chyt B	
Thurs { 1st April	19 Chyt	28 Chyt	11 Rajjab	13 Chyt S	
15th April	2 Bysack	12 Bysakh	25 Rajjab	11 Bysakh B	
Sat { 1st May	18 Bysack	28 Bysakh	11 Shaban	14 Bysakh S	
15th May	1 Jhyst	12 Jhyst	25 Shaban	12 Jhyst B	
Mon { 1st June	18 Jhyst	29 Jhyst	13 Ramzan	15 Jhyst S	
15th June	1 Assar	14 Assar	27 Ramzan	14 Assar B	

For *Bhelaity* or *Amili* year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

[806]

English Year	Bengali Year	Farsi Year	Musulman Year (Hizri)	Sambat or Hindi Year	Note
1920	1327	1327	1338	1977	For Bhehlayit or Amlit year and date—add one to Bengali year and generally one to Bengali date respectively
Thurs { 1st July	17 Astar	30 Astar	14 Showal	15 Astar S	
15th July	31 Astar	13 Sraban	27 Showal	13 Sraban B	
Sun. { 1st August	16 Sraban	2 Sraban 2nd	15 Zilkaid	2 Sraban B	
15th August	30 Sraban	16 Sraban	29 Zilkaid	1 Sraban S	
Wed { 1st September	16 Bhadra	3 Bhadra	17 Zilhijja	3 Bhadra B	
15th September	30 Bhadra	17 Bhadra	1339 1 Mohurum	3 Bhadra S	
Thurs { 1st October	15 Aasin	3 Aasin	17 Mohurum	4 Aasin B	
15th October	29 Aasin	17 Aasin	2 Sufer	3 Aasin S	
Mon. { 1st November	15 Kartick	5 Kartick	19 Sufer	5 Kartick B	
15th November	29 Kartick	19 Kartick	3 Rub ul A	5 Kartick S	
Wed { 1st December	16 Aghran	5 Aghran	19 Rab ul A	6 Aghran B	
15th December	30 Aghran	19 Aghran	4 Rab us S	5 Aghran S	

CHRONOLOGICAL TABLE

English Year	Bengali Year	Fush Year	Musliman Year (Hizri)	Sambat or Hindi Year	Note
1921	1327	1328	1339	1977	
Sat { 1st January	17 Pous	7 Pous	21 Rub us S	8 Pous B	
15th January	2 Megh	21 Pous	5 Jomo ol A	6 Pous S	
Tues { 1st February	19 Megh	9 Megh	22 Jomo ol A	9 Megh B	
15th February	3 Phalagoon	23 Megh	6 Jam-us S	7 Megh S	
Tues { 1st March	17 Phalagoon	7 Phalagoon	20 Jam us S	7 Phalagoon B	
15th March	2 Chyt	21 Phalagoon	4 Rujab	6 Phalagoon S,	
Fri { 1st April	19 Chyt	9 Chyt	21 Rujab	9 Chyt B	
15th April	2 Bysakh	23 Chyt	6 Shaban	8 Chyt S	
Sun { 1st May	18 Bysakh	9 Bysakh	22 Shaban	9 Bysakh B	
15th May	1 Jhyat	23 Bysakh	6 Ramzan	8 Bysakh S	
Wed { 1st June	18 Jhyat	11 Jhyat	23 Ramzan	10 Jhyat B	
15th June	1 Asaar	25 Jhyat	8 Showal	10 Jhyat S	

For Bhelast or A mile year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

[016]

English Year	Bengali Year	Farsi Year	Musulman Year (Hijris)	Sambat or Hindi Year	Note
1921	1328	1328	1339	1978	For <i>Bhadraty</i> or <i>Amle</i> year and date—add one to Bengali year and generally one to Bengali date respectively
Fr { 1st July 15th July	17 Assar 31 Assar	11 Assar 25 Assar	24 Showal 8 Zilkaid	11 Assar B 11 Assar S	
Moo { 1st August 15th August	16 Sraban 30 Sraban	13 Sraban 27 Sraban	25 Zilkaid 10 7 Ihya	12 Sraban B 12 Sraban S	
Tues { 1st September 15th September	16 Bhadra 30 Bhadra	14 Bhadra 28 Bhadra	21 Zilhja 12 Mohurum	14 Bhadra B 13 Bhadra S	
Sat { 1st October 15th October	15 Assin 29 Assin	15 Assin 29 Assin	28 Mohurum 12 Saffar	10 Assin B 14 Assin S	
Tues { 1st November 15th November	15 Kartick 29 Kartick	16 Kartick 30 Kartick	29 Saffar 14 Rub ul A	2 Kartick B 15 Kartick S	
Thurs { 1st December 15th December	15 Aghran 29 Aghran	16 Aghran 30 Aghran	30 Rabi ul A 14 Rabi us S	2 Aghran S 15 Aghran S	

CHRONOLOGICAL TABLE

English Year	Bengali Year	Fush Year	Musulman Year (Hizri)	Samlat or Hindu Year	Note
1922	1328	1329	1340	1978	For <i>Bhela</i> or <i>Amle</i> year and date—add one to Bengali year and generally one to Bengali date respectively
Sun { 1st January	17 Pous	17 Pous	2 Jam ul A	3 Pous S	
15th January	1 Magh	2 Magh	16 Jam ul A	2 Magh B	
Wed { 1st February	18 Magh	19 Magh	3 Jam us S	4 Magh S	
15th February	3 Falgoon	3 Phalgoon	17 Jam us S	4 Phalgoon B	
Wed { 1st March	17 Falgoon	17 Phalgoon	1 Rajab A	3 Phalgoon S	
15th March	1 Chyt	2 Chyt	15 Rajab A	2 Chyt B	
Sat { 1st April	18 Chyt	19 Chyt	2 Shaban	4 Chyt S	
15th April	2 Bysakh	4 Bysakh	16 Shaban	4 Bysakh B	
Mon { 1st May	18 Bysakh	20 Bysakh	3 Ramjan	4 Bysakh S	
15th May	1 Jhyt	4 Jhyt	17 Ramjan	4 Jhyt B	
Thurs { 1st June	18 Jhyt	21 Jhyt	4 Showal	6 Jhyt S	
15th June	1 Assar	6 Assar	18 Showal	6 Assar B	

CHRONOLOGICAL TABLE.

[216]

English Year	Bengali Year	Farsi Year	Mussulman Year (Hizri)	Sambat or Hindis Year	Note
1922	1329	1329	1340	1979	For <i>Bhelaity</i> or <i>Amis</i> year and date—add one to Bengali year and generally one to Bengali date respectively
Sat { 1st July	17 Asar	22 Asar	5 Zilkaid	7 Asar S	
15th July	31 Asar	6 Sraban	19 Zilkaid	6 Sraban B	
Tues { 1st August	16 Sraban	23 Sraban	7 Zilhijja	9 Sraban S	
15th August	30 Sraban	8 Bhadra	20 Zilhijja	7 Bhadra B	
1st September	15 Bhadra	25 Bhadra	8 Muhurum	10 Bhadra B	
15th September	29 Bhadra	9 Asun	22 Muhurum	9 Asun B	
1st October	14 Asun	25 Asun	9 Suffer	11 Asun S	
15th October	28 Asun	10 Kartick	23 Suffer	9 Kartick B	
1st November	15 Kartick	27 Kartick	21 Rabi ul A	12 Kartick S	
15th November	29 Kartick	11 Aghran	24 Rabi ul A	11 Aghran B	
1st December	15 Aghran	27 Aghran	11 Rub us S	12 Aghran S	
15th December	29 Aghran	11 Pous	25 Rub us S	12 Pous B	

CHRONOLOGICAL TABLE

1916

English Year	Bengali Year	Fush Year	Musulman Year (Hijri)	Sambat or Hindi Year	Note
1923	1329	1330	1341	1979	
Mon { 1st January	17 Pous	29 Pous	13 Jam ul A	13 Pous S	
15th January	1 Magh	12 Magh	27 Jam ul A	13 Magh B	
Tues { 1st February	18 Magh	29 Magh	14 Jam-us S	15 Magh S	
15th February	3 Phalgun	14 Phalgun	23 Jam us S	30 Phalgun B	
Thurs { 1st March	17 Phalgun	23 Phalgun	12 Rajab	13 Phalgun S	
15th March	1 Chyt	12 Chyt	26 Rajab	13 Chyt B	
Sun { 1st April	18 Chyt 1330	29 Chyt	13 Shaban	15 Chyt S 1980	
15th April	2 Bysakh	14 Bysakh	27 Siaban	14 Bysakh B	
Tues { 1st May	18 Bysakh	15 Jhyet	14 Ramzan	12 Jhyet B	
15th May	1 Jhyet	15 Jhyet (1st)	28 Ramzan	30 Jhyet B	
Fri { 1st June	18 Jhyet	2 Jhyet (2nd)	15 Showal	2 Jhyet B (2nd)	
15th June	32 Jhyet	16 Jhyet (2nd)	29 Showal	1 Jhyet S (2nd)	

For Bhetlany or Amla year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

English Year	Bengali Year	Fush Year	Musulman Year (Hizri)	Sambat or Hindi Year	Note
1923	1330	1330	1341	1930	
Sun { 1st July	16 Astar	3 Astar	15 Zilkaid	3 Astar B	
15th July	30 Astar	17 Astar	29 Zilkaid	1 Astar S	
Wed { 1st August	16 Sraban	5 Sraban	17 Zilhijja 1342	5 Sraban B	
15th August	30 Sraban	19 Sraban	2 Muhurram	3 Sraban S	
Sat. { 1st September	15 Bhadra	6 Bhadra	29 Muhurram	6 Bhadra B	
15th September	29 Bhadra	20 Bhadra 1331	3 Sufer	5 Bhadra S	
Mon { 1st October	14 Aasin	7 Aasin	19 Sufer	6 Aasin B	
15th October	28 Aasin	21 Aasin	4 Rub ul A	6 Aasin S.	
Thurs { 1st November	15 Kartick	8 Kartick	21 Rabi ul A	7 Kartick B	
15th November	29 Kartick	22 Kartick	5 Rabi us S	7 Kartick S	
Sat. { 1st December	15 Aghran	8 Aghran	21 Rabi us S	8 Aghran B	
15th December	29 Aghran	22 Aghran	6 Jam ul A	8 Aghran S.	

For *Bhetar* or *Amit* year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

[915]

English year	Bengali year	Fush year	Muslaman year (Hijri)	Samvat or Hindu year	Note
1924	1330	1331	1342	1980	
Tues { 1st January	16 Pous	9 Pous	23 Jam ul A	9 Pous B	
15th January	1 Magh	23 Pous	7 Jam us S	9 Pous S	
Fri { 1st February	18 Magh	11 Magh	24 Jam us S	11 Magh B	
15th February	3 Phalgun	25 Magh	9 Rajab	10 Magh S	
Sat { 1st March	18 Phalgun	10 Phalgun	24 Rajab	11 Phalgun B	
15th March	2 Chyt	24 Phalgun	8 Shaban	9 Phalgun S	
Tues { 1st April	19 Chyt 1321	11 Chyt	25 Shalan	12 Chyt B 1981	
15th April	2 Bysakh	25 Chyt	10 Ramzan	11 Chyt S	
Thurs { 1st May	18 Bysakh	12 Bysakh	26 Ramzan	13 Bykh B	
15th May	1 Jhyt	26 Byakh	10 Shawal	11 Bykh S	
Sun { 1st June	18 Jhyt	14 Jhyt	27 Shawal	14 Jhyt B	
15th June	1 Assar	28 Jhyt	11 Zulkaid	13 Jhyt S	

For Bhadraty or *Amis* year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

[916]

English year	Bengali year	Fush year	Mussulman year (H. Zin)	Sambat or Hindi year	Note
1924	1331	1331	1342	1981	For <i>Bhelaity</i> or <i>Amile</i> year and date—add one to Ben- gali year and generally one to Bengali date respectively
Tue { 1st July	17 Astar	14 Astar	27 Zilkaid	14 Astar B	
15th July	31 Astar	28 Astar	12 Zulhijja	14 Astar S	
Fri { 1st August	16 Sraban	16 Sraban	29 Zulhijja	1 Sraban S	
15th August	30 Sraban	1 Bhadra	13 Moharrum	1 Bhadra B	
Mon. { 1st September	16 Bhadra	18 Bhada	1 Sufer	2 Bhadra S	
15th September	30 Bhadra	2 Assin	15 Sufer	2 Assin B1	
Wed. { 1st October	15 Assin	18 Assin	1 Rabi ul A	3 Assin S	
15th October	29 Assin	3 Kartick	15 Rabi ul A	3 Kartick	
Sat { 1st November	15 Kartick	20 Kartick	3 Rabi us S	5 Kartick S	
15th November	29 Kartick	4 Aghran	17 Rabi us S	4 Aghran B	
Mon. { 1st December	16 Aghran	20 Aghran	3 Jam ul A	5 Aghran S	
15th December	30 Aghran	4 Pous	17 Jam ul A	4 Pous B	

CHRONOLOGICAL TABLE

English Year	Bengali Year	Fush Year	Musulman Year (Hijri)	Sambat or Hindu Year	Note
1925	1331	1332	1343	1931	
Thurs { 1st January	17 Pous	21 Pous	5 Jam ul 1 S	7 Pous S	
15th January	2 Magh	5 Magh	19 Jam ul B	5 Magh B	
Sun { 1st February	19 Magh	22 Magh	6 Rajjeb	8 Magh S	
15th February	3 Phalgon	7 Phalgon	20 Rajjeb	7 Phalgon B	
Sun { 1st March	17 Phalgon	21 Phalgon	5 Shaban	7 Phalgon S	
15th March	1 Chyt	5 Chyt	19 Shaban	5 Chyt B	
Wed { 1st April	18 Chyt	22 Chyt	6 Ramzan	8 Chyt S	
15th April	2 Bysack	6 Bysakh	20 Ramzan	7 Bysakh B	
Fri { 1st May	18 Bysack	22 Bysakh	7 Showal	8 Bysakh S	
15th May	1 Jhyst	7 Jhyst	21 Showal	8 Jhyst B	
Moo { 1st June	18 Jhyst	24 Jhyst	8 Zilkaid	9 Jhyst S	
15th June	1 Assar	9 Assar	22 Zilkaid	9 Assar B	

For Bhelaity or Amle Year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

[816]

English Year	Bengali Year	Fuli Year	Musliman Year (Hizri)	Sambat or Hindu Year	Note
1925	1352	1332	1343	1932	For <i>Bhelaity</i> or <i>Amli</i> year and date—add one to Bengali year and generally one to Bengali date respectively
Wed { 1st July	17 Assar	25 Assar	9 Zilhja	10 Assar S	
15th July	31 Assar	9 Sraban	23 Zilhja	10 Sraban B	
1st August	16 Sraban	26 Sraban	10 Mohurram	12 Sraban S	
Sat. { 15th August	30 Sraban	11 Bhadra I	24 Mohurram	11 Bhadra B	
1st September	16 Bhadra	28 Bhadra	11 Sufer	14 Bhadra S	
Tues. { 15th September	30 Bhadra	1333 13 Assin	25 Sufer	13 Assin B	
1st October	15 Assin	29 Assin	12 Rub ul A	14 Assin S	
15th October	29 Assin	13 Kartick	26 Rub ul A	13 Kartick B	
1st November	15 Kartick	1 Aghran	13 Rub us S	1 Aghran B	
15th November	29 Kartick	15 Agran	27 Rub us S	14 Aghran B	
1st December	15 Aghran	1 Pous	14 Jam ul A	1 Pous B	
15th December	29 Aghran	15 Pous	28 Jam us A	1 Pous S	

CHRONOLOGICAL TABLE

English Year	Bengali Year	Fush Year	Musulman Year (Hijri)	Sambat or Hindis Year	Note
1926	1332	1333	1344	1982	For <i>Bhelaity</i> or <i>Amla</i> year and date—add one to Bengali year and generally one to Bengali date respectively
Fri {	1st January	3 Magh	15 Jam us S	2 Magh B	
	15th January	15 Magh	29 Jam us S	1 Magh S	
Mon {	1st February	4 Falgoon	17 Rojub	3 Phalagoon B	
	15th February	18 Falgoon	1 Shaban	3 Phalagoon S	
Mon {	1st March	2 Chyt 1st	15 Sheban	2 Chyt B 1	
	15th March	16 Chyt 1st	29 Shaban	1 Chyt S 1	
Thurs {	1st April	3 Chyt 2nd	17 Ramzan	3 Chyt B 11	
	15th April	17 Chyt 2nd	1 Showal	3 Chyt S 11	
Sat {	1st May	4 Bysakh	17 Showal	4 Bykh B	
	15th May	18 Bysakh	2 Zilkaid	4 Bykh S	
Tues {	1st June	5 Jhyt	19 Zilkaid	5 Jhyt B	
	15th June	19 Jhyt	24 Zilhajja	5 Jhyt S	

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English Year	Bengali Year	Fush Year	Musulman Year (Hizri)	Sambat or Hindi Year	Note
1926	1333	1333	1334	1983	For <i>Bhelaity</i> or <i>Amita</i> year and date—add one to Bengali year and generally one to Bengali date respectively
Thurs { 1st July	16 Astar	6 Astar	19 Ziliah jia	6 Astar B	
15th July	30 Astar	20 Astar	1345 4 Muhuram	5 Astar S	
Sun { 1st August	16 Sraban	7 Sraban	21 Muhuram	8 Sraban B	
15th August	30 Sraban	21 Sraban	5 Sufer	7 Sraban S	
Wed { 1st September	15 Bhadra	9 Bhadra	22 Suffer	10 Bhadra B	
15th September	29 Bhadra	23 Bhadra	7 Rabi ul A	8 Bhadra S	
Fri { 1st October	14 Astar	10 Astar	23 Rabi ul A	10 Astar B	
15th October	28 Astar	24 Astar	7 Rabi us S	9 Astar S	
Mon. { 1st November	15 Kartick	11 Kartick	24 Rabi us S	11 Kartick B	
15th November	29 Kartick	25 Kartick	8 Jam ul A	10 Kartick S	
Wed { 1st December	15 Aghran	12 Aghran	24 Jam ul A	11 Aghran B	
15th December	29 Aghran	26 Aghran	9 Jum oot S	11 Aghran S	

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English year.	Bengali year	Fust year	Muslim year (Hijri).	Sambat or Hindi year	Note.
1927.	1333	1334	1345	1933	
Sat { 1st January	17 Pous	13 Pous	26 Jum us-S	13 Pous B.	
15th January	1 Magh	27 Pous	10 Rejab	13 Pous S	
Tues. { 1st February	16 Magh	15 Magh	27 Rejab	14 Magh B	
15th February	3 Falgoon	29 Magh	12 Shaban	14 Magh S.	
Tues. { 1st March	17 Falgoon	13 Falgoon	26 Shaban	12 Phalgun B	
15th March	1 Chyt	27 Falgoon	10 Ramzan	12 Phalgun S	
Fri { 1st April	18 Chyt	14 Chyt	27 Ramzan	14 Chyt B	
15th April	2 Bysakh	28 Chyt	12 Showal	14 Chyt S	
Sun { 1st May	18 Bysakh	14 Bysakh	28 Showal	30 Bykh B	
15th May	1 Jhyt	28 Bysakh	12 Zilkaid	14 Bykh S	
Wed { 1st June	18 Jhyt	16 Jhyt	29 Zilkaid	2 Jhyt S	
15th June	32 Jyt	30 Jhyt	14 Zilhujja	15 Jhyt S	

For Bhaistya or Amle year and date—add one to Ben-
gali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

English Year	Bengali Year	Fuli Year	Mussulman Year (Hizri)	Sambat or Hindi Year	Note
1926	1333	1333	1334	1983	
Thurs { 1st July	16 Assar	6 Assar	19 Zilhijja 1345	6 Assar B	
15th July	30 Assar	20 Assar	4 Muhuram	5 Assar S	
Sun. { 1st August	16 Sraban	7 Sraban	21 Muhuram	8 Sraban B	
15th August	30 Sraban	21 Sraban	5 Suffer	7 Sraban S	
Wed { 1st September	15 Bhadra	9 Bhadra	22 Suffer	10 Bhadra B	
15th September	29 Bhadra	23 Bhadra 1334	7 Rabi ul A	8 Bhadra S	
Fri { 1st October	14 Assin	10 Assin	23 Rabi ul A	10 Assin B	
15th October	28 Assin	24 Assin	7 Rabi us S	9 Assin S	
Mon. { 1st November	15 Kartick	11 Kartick	24 Rabi us S	11 Kartick B	
15th November	29 Kartick	25 Kartick	8 Jam ul A	10 Kartick S	
Wed { 1st December	15 Aghran	12 Aghran	24 Jam ul A	11 Aghran B	
1st December	29 Aghran	26 Aghran	9 Jum. oos S	11 Aghran S	

For Bhelaity or Ahmli year and date—add one to Bengali year and generally one to Bengali date respectively

CHRONOLOGICAL TABLE

English year	Bengal year	Fasil year	Mussulman year (Hizri)	Sambat or Hindi year	Note
1927.	1333	1334	1345	1983	For <i>Bhelaity</i> or <i>Amli</i> year and date—add one to Bengali year and generally one to Bengali date respectively
{ 1st January	17 Pous	13 Pous	26 Jum-us S	13 Pous B	
{ 15th January	1 Megh	27 Pous	10 Rajab	13 Pous S	
{ 1st February	18 Megh	15 Megh	27 Rajab	14 Megh B	
{ 15th February	3 Falgoon	29 Megh	12 Shaban	14 Megh S	
{ 1st March	17 Falgoon	13 Falgoon	26 Shaban	12 Phalgun B	
{ 15th March	1 Chyt	27 Falgoon	10 Ramzan	12 Phalgun S	
{ 1st April	18 Chyt	14 Chyt	27 Ramzan	14 Chyt B	
{ 15th April	2 Bysakh	28 Chyt	12 Showal	1934 14 Chyt S	
{ 1st May	18 Bysakh	14 Bysakh	28 Showal	30 Bykh B	
{ 15th May	1 Jhyst	28 Bysakh	12 Zilkaid	14 Bykh S	
{ 1st June	18 Jhyst	16 Jhyst	29 Zilkaid	2 Jhyst S	
{ 15th June	32 Jyot	30 Jhyst	14 Zilhijja	15 Jhyst S	

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English year	Bengali year	Fush year	Mussulman year (H. Z.)	Sambat or Hindi year	Note
1927	1334	1334	1346	1984	For <i>Bhelaity</i> or <i>Amis</i> year and date—add one to Ben- gali year and generally one to Bengali date respectively
{ Fri	16 Asar	16 Asar	1 Mohurrum	2 Asar S	
	30 Asar	1 Sraban	15 Mohurrum	1 Sraban B	
{ Mon.	16 Sraban	18 Sraban	2 Sufer	4 Sraban S	
	30 Sraban	2 Bhadra	16 Sufer	3 Bhadra B	
{ Thurs	15 Bhadra	19 Bhadra	4 Rabi ul A	5 Bhadra S	
	29 Bhadra	4 Asin	18 Rabi ul A	4 Asin B	
{ Sat.	14 Asin	20 Asin	4 Rabi us S	5 Asin S	
	28 Asin	5 Kartick	18 Rabi us S	5 Kartick B	
{ Tues.	15 Kartick	22 Kartick	5 Jam ul-A	7 Kartick S	
	29 Kartick	6 Aghran	19 Jam ul A	7 Aghran B	
{ Thurs.	15 Aghran	22 Aghran	5 Jum oos S	7 Aghran S	
	29 Aghran	7 Pous	19 Jum oos S	7 Pous B	

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English year	Bengali year	Farsi year	Musulman year (H. zn)	Sambat or Hindi year	Note
1927	1334	1334	1346	1934	For Bhadrity or Aris year and date—add one to Ben- gali year and generally one to Bengali date respectively
Fri. {	16 Asar	16 Asar	1 Mohurrum	2 Asar S	
	30 Asar	1 Sraban	15 Mohurrum	1 Sraban B.	
Mon. {	16 Sraban	18 Sraban	2 Sufer	4 Sraban S	
	30 Sraban	2 Bhadra	16 Sufer	3 Bhadra B	
Thurs {	15 Bhadra	19 Bhadra	4 Rabi ul A	5 Bhadra S	
	29 Bhadra	4 Asoo	18 Rabi ul A	4 Asoo B	
Sat {	14 Asoo	20 Asoo	4 Rabi us S	5 Asoo S	
	28 Asoo	5 Kartick	18 Rabi us S	5 Kartick B	
Tues. {	15 Kartick	22 Kartick	5 Jam ul A	7 Kartick S	
	29 Kartick	6 Aghran	19 Jam ul A	7 Aghran B	
Thurs {	15 Aghran	22 Aghran	5 Jum oos S	7 Aghran S	
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1927	1334	1334	1346	1984	For <i>Bhelaity</i> or <i>Amli</i> year and date—add one to Ben gali year and generally one to Bengali date respectively
Fri { 1st July 15th July	16 Asar	16 Asar	1 Moharrum	2 Asar S	
	30 Asar	1 Sraban	15 Moharrum	1 Sraban B	
Mon. { 1st August 15th August	16 Sraban	18 Sraban	2 Sufer	4 Sraban S	
	30 Sraban	2 Bhadra	16 Sufer	3 Bhadra B	
Thurs { 1st September 15th September	15 Bhadra	19 Bhadra 1335	4 Rabi ul A	5 Bhadra S	
	29 Bhadra	4 Asvin	18 Rabi ul A	4 Asvin B	
Sat { 1st October 15th October	14 Asvin	20 Asvin	4 Rabi ul S	5 Asvin S	
	28 Asvin	5 Kartick	18 Rabi ul S	5 Kartick B	
Tues. { 1st November 15th November	15 Kartick	22 Kartick	5 Jam ul A	7 Kartick S	
	29 Kartick	6 Aghran	19 Jam ul A	7 Aghran B	
Thurs. { 1st December 15th December	15 Aghran	22 Aghran	5 Jum oos S	7 Aghran S	
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